Below in default — 2-438 Thos Davis

— Reversed —

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. 219.

---

THE STEAM FERRY-BOAT AMERICA, HER TACKLE, &c., THE UNION FERRY COMPANY OF BROOKLYN, CLAIMANTS, APPELLANTS,

vs.

THE CAMDEN AND AMBOY RAILROAD AND TRANSPORTATION COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED AUGUST 10, 1874.

— Clifford

# SUPREME COURT OF THE UNITED STATES.

## No. 219.

THE STEAM FERRY-BOAT AMERICA, HER TACKLE, &c., THE UNION FERRY COMPANY OF BROOKLYN, CLAIMANTS, APPELLANTS,

VS.

THE CAMDEN AND AMBOY RAILROAD AND TRANSPORTATION COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.


| | Original. | Print. |
|---|---|---|
| Libel | 1 | 1 |
| Answer | 5 | 3 |
| LIBELLANTS' TESTIMONY. | | |
| Wm. H. Radcliff | 9 | 5 |
| John Quick | 29 | 17 |
| Thomas Furguson | 41 | 24 |
| P. Van Kuren | 48 | 28 |
| Thomas Fitzsimons | 54 | 32 |
| Abram Quick | 60 | 35 |
| John Quick, (recalled) | 66 | 39 |
| CLAIMANTS' TESTIMONY. | | |
| John V. Baulsir | 66 | 40 |
| Robert C. White | 81 | 49 |
| John V. Baulsir, (recalled) | 88 | 53 |
| William Woolsey | 89 | 53 |
| Edward Mount | 94 | 57 |
| Joseph Hanson | 101 | 61 |
| Stephen Crowell | 105 | 63 |
| Decree | 115 | 69 |
| Notice of appeal to United States circuit court | 117 | 69 |
| Bond on appeal to United States circuit court | 119 | 70 |
| Petition on appeal to United States circuit court | 121 | 71 |
| Hearing of cause in circuit court | 124 | 72 |

| | Original. | Print. |
|---|---|---|
| Opinion of Judge Woodruff, in circuit court | 126 | 72 |
| Decree with reference to commissioner | 136 | 76 |
| Examination of William Brown on reference | 138 | 76 |
| Examination of William Brown on reference | 141 | 77 |
| Testimony of J. B. Stevens | 144 | 78 |
| Testimony of J. B. Stevens | 151 | 80 |
| Commissioner's report | 159 | 82 |
| Exceptions to commissioner's report | 161 | 82 |
| Additional exceptions to commissioner's report | 163 | 83 |
| Hearing of cause on exceptions | 165 | 83 |
| Opinion of Judge Woodruff on exceptions | 167 | 84 |
| Final decree | 169 | 85 |
| Notice of appeal to United States Supreme Court | 171 | 86 |
| Petition of appeal to United States Supreme Court | 173 | 86 |
| Bond on appeal to United States Supreme Court | 177 | 88 |
| Citation on appeal to United States Supreme Court | 179 | 89 |
| Clerk's certificate | 181 | 89 |

1 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York, on Saturday, the 23d day of October, in the year of the Lord one thousand eight hundred and sixty-nine:

Present, the Hon. Samuel Blatchford, district judge.

THE CAMDEN & AMBOY RAILROAD TRANSportation Company
*vs.*
THE STEAM FERRY-BOAT AMERICA, ETC. } 20, 429.

1867, JANUARY 10TH.—The libellants file their libel against the Steam Ferry-boat America, her tackle, etc., in the words and figures following, to wit:

To the Hon. Samuel R. Betts, judge of the district court of the United States for the southern district of New York:

The libel and complaint of the Camden and Amboy Railroad and Transportation Company, owners of the steamboat Fairfield, against the Steam Ferry-boat called the America, her engine, tackle, apparel, and furniture, and all persons lawfully intervening for their interest therein, in a cause of collision, civil and maritime. And thereupon, the libellants allege and articulately propound as follows:

2 First. That the said steam ferry-boat America, her engine, tackle, apparel, and furniture, are now in this district.

Second. That at the time hereinafter mentioned the said steamboat Fairfield, her engine, tackle, apparel, and furniture, was owned by the libellants, and was tight, staunch, well and sufficiently manned, tackled, and provided.

Third. That before the thirteenth day of December last past said steamboat Fairfield had for a long time been engaged in the business of towing, distributing around the harbor of New York canal boats, who were engaged in the business of carrying coal to and from New York and New Brunswick, in the State of New Jersey, and that on the day above stated she had towed a number of boats from New Brunswick to the port of New York, and had left the last boat at the navy-yard and then headed down the East River, and about the middle thereof, bound to her berth at the foot of Christopher street, North River, being about five o'clock in the afternoon, and the tide strong ebb; that while thus bound down the East River the ferry-boat America left her slip on the New York side, at Fulton Ferry, bound to Brooklyn, and that as the vessels neared each other a single whistle was blown by the Fairfield to indicate her intention to go to the right of the America, and the wheel of the Fairfield was put to port and her head sheered angling towards the New York shore; that no attention was paid by the America to the whistle of the Fairfield, but she continued to haul more up the river and on to the Fairfield; that finding that the America was rapidly hauling on to the Fairfield, and still continuing to head more and more up the river, and that a collision, if the America kept on, would probably happen, the bells of the Fairfield were rung to slow, to stop, and back, and which orders were promptly obeyed, and the headway of the Fairfield nearly if not quite stopped on the water, and that while in that condition the America blew two whistles, indicating her intention to go to the left, at which time she was so close to the Fairfield,

3 and the engine and the way of the Fairfield being stopped, she

could do nothing except to continue to back her engine, and the America kept on at nearly if not quite full speed, striking the stern of the Fairfield a little on the larboard side, knocking her stern and starboard and crushing in her planks and timbers and opening her forward; that the Fairfield commenced to take in water rapidly, making it certain that she would sink within a short time, and *which* was made from the Fairfield to the America, that she was in distress and sinking, to which a reply came from the America to "go to hell," or words to that effect, and she kept on paying no attention to the Fairfield whatever; that by the dint of great exertion the Fairfield was backed into a slip below Fulton ferry, on the Brooklyn side, where she sunk in a few moments, and where she now lies; but efforts are being made to raise her, which will be probably successful within a day or two.

Fourth. That owing to the fact that the Fairfield had not yet been raised and repaired, it is impossible to state the extent of the damage she has sustained; that at the time she was sunk she was constantly engaged in a profitable and steady employment, but that, the period of her delay being uncertain, it is impossible for the libellants to approximate with certainty as to the damages they have already and will hereafter sustain by reason of her detention and loss of service, but they charge that the entire damage will reach if not exceed the sum of twenty thousand dollars.

Fifth. That the collision happened through the carelessness, negligence, and want of skill and management in those navigating the America, and, among other things, in not having good and sufficient lookout, in not promptly answering the single whistle of the Fairfield, in hauling up the river in such manner as to bring her upon the Fairfield; in not keeping to the right, in blowing two whistles and attempting to go to the left of the Fairfield, when the Fairfield was lying dead on the water, and when she was so near to the Fairfield that a collision could
4 not be avoided; in passing outside the Fairfield and then steering up the river and towards the Fairfield, in not slowing, stopping, and backing before the collision was inevitable, and in not rendering assistance to the Fairfield when in distress; that the management and navigation of the Fairfield was correct and proper, as it was her duty to keep to the right and to indicate her intention by a single whistle, and when she found that the America disregarded her signal and continued to steer on to her, in slowing, stopping, and backing.

Sixth. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court.

Wherefore the libellants pray that process in due form of law may issue against the said steam ferry-boat America, her engine, tackle, apparel and furniture, and that all persons having or pretending to have any interest therein may be cited to appear and answer all and singular the matters so propounded, and that this honorable court would be pleased to pronounce for the damages aforesaid, and for such other and different relief in the premises as shall to law and justice appertain, and also to condemn the said steam ferry-boat America and the party intervening for his interest therein in costs.

MICHAEL O'NEILL, *Agent.*

Sworn to before me this 10th day of Jan., 1867.

JOHN A. OSBORNE,
*U. S. Commr.*

BEEBE, DEANE & DONOHUE,
*Proctors.*

BEEBE, *Advocate.*

[U. S. 5-cent int. rev. stamp, cancelled.]

5 To the honorable Samuel Blatchford, judge of the district court of the United States for the southern district of New York:

The answer of the Union Ferry Company of Brooklyn, owners of the steam ferry-boat called the America, her engines, &c., to the libel of the Camden and Amboy Railroad and Transportation Company against the said ferry-boat alleges and sets forth as follows:

First. These respondents have no personal knowledge of whom the Camden and Amboy Railroad Company mentioned in said libel consist, or whether said company are, or at any time have been, or have capacity to be, the owners of the steamboat Fairfield. But the respondents on information and belief deny that the said steamboat, her engine, tackle, apparel, and furniture, were at the time mentioned in said libel tight, staunch, and well and sufficiently manned, tackled, and provided, and they therefore deny the allegation in the libel in those respects.

Second. These respondents, on information and belief, deny the allegations in the third article of said libel, except as hereinafter stated; and they in like manner allege that the facts and circumstances attending the collision in the libel mentioned were as follows: The said ferry-boat being at the time tight, staunch, and well and sufficiently manned, tackled, equipped, and provided, had left her slip at the Fulton Ferry, on the New York side of the East River, with a large number of passengers and vehicles aboard, and was following her usual, proper, and *and* lawful course toward her slip at the Fulton ferry, on the Brooklyn side of said river, when, within about 200 yards of the Brooklyn shore, and about 250 or 300 yards of the said last-mentioned slip, and heading up the East River against a strong ebb tide, for the purpose of getting room to swing into her Brooklyn slip, her pilot and lookout discerned the steamboat Fairfield, in the libel mentioned, under full way and heading down the river and towards the Brooklyn shore on a course which,

6 if continued, would have carried her in front of and past the ferry-boat on the side toward the Brooklyn shore and into a slip or space between the Fulton ferry slip and the pier below said slip where the Fairfield had theretofore been in the habit of going to leave or take up coal-barges. Thereupon the said ferry-boat kept steadily on her course up the river, in order that the Fairfield might keep her course and pass in front of the ferry-boat, as she could easily have done, without any collision; but the said Fairfield, instead of keeping her course and so passing the ferry-boat, as she should have done, after continuing said course until within a short distance of the ferry-boat, and when the Fairfield was still under full headway, and when it was impossible for the said boats to so change their course as to pass each other on the right without colliding with each other, blew one whistle, indicating her intention to pass on the right and outside of the ferry-boat, and simultaneously put her helm hard to port, and in that way sheered her directly towards the ferry-boat. As soon as the Fairfield so sheered and blew her whistle, it was obvious that she would strike the ferry-boat on the starboard side, unless said boat could be so sheered as to receive the blow upon her bow, or as to admit of the Fairfield passing on the opposite side of said boat, or of striking her a quartering instead of a full blow on her side; that the only course which the pilot of the ferry-boat could thereupon properly adopt to prevent the ferry-boat from being struck as aforesaid on her starboard, and being cut through, to the imminent peril of the lives of her large number of passengers, was to give one whistle as a signal, so that the Fairfield might put her helm as hard aport as possible, and to put the helm of the said ferry-boat hard

aport at the same time, all of which was immediately done by the pilot of said ferry-boat, and the ferry-boat was immediately stopped and her engines backed, and she had stopped her headway by the land when the Fairfield, continuing her course directly towards the ferry-boat, struck her, the two vessels colliding head and head.

7 Third. That the said ferry-boat was in all respects well and skilfully managed and navigated, and everything that could be done on board the ferry-boat to avoid the collision or to lessen the violence of the same when the collision became inevitable, was done.

Fourth. That the said collision was caused wholly by the carelessness, negligence, and want of skill and management of the persons navigating the Fairfield, and, among other things, in not having a good and sufficient lookout or a competent pilot; in blowing one whistle and putting her helm to port and attempting to pass the ferry-boat on the right, when she had sufficient room to pass the ferry-boat on the left, and her course, if continued, would have taken her past the ferry-boat on the left, and when it was plain that an attempt to pass on the right would probably bring about a collision; and in not slowing, stopping, and backing before the collision became inevitable, or so as to lessen the force of the same.

Fifth. These respondents deny each and every allegation in the libel contained that is inconsistent with the allegations in this answer or any of them.

SILLIMAN & ANDERSON,
*Proctors for Claimants, 43 Wall st., New York.*

BENJ. D. SILLIMAN,
*Advocate.*

COUNTY OF KINGS, CITY OF BROOKLYN, *ss:*

Cyrus P. Smith, being sworn, says that he is a managing director of the Union Ferry Company of Brooklyn, within named; that he has read the within answer and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein

8 stated on information and belief, and as to those matters he believes it to be true.

C. P. SMITH.

Sworn before me this 9th May, 1867.

FRANCIS DE ,
*Notary Public.*

(Endorsed:) 20429. U. S. district court, southern district of New York. Camden & Amboy R. R. and Transportation Company vs. The Steam Ferry-boat America. Answer. Silliman & Anderson, proctor' for claimants, 43 Wall street. Filed May 13th, 1867.

United States district court, southern district of New York.

Before Honorable Judge Blatchford, May 17, 1869.

THE CAMDEN & AMBOY RAILROAD COMPANY
*against*
THE STEAMBOAT AMERICA, ETC.

Appearances.—Messrs. Beebe, Donohue & Cooke, for libellant; B. D. Silliman, esq., for defendant.

9 Mr. Beebe read the libel.
Mr. Silliman read the answer.

WM. H. RADCLIFF sworn on behalf of libellant.

Examined by Mr. Beebe:

Q. Where do you hail from?
A. From New York now.
Q. And born where?
A. New Jersey.
Q. How old are you?
A. Twenty-six years old in about two months.
Q. Do you follow the water for a living?
A. Yes, sir.
Q. How long have you done so?
A. About 14 years.
Q. What was your particular business?
A. Pilot.
Q. How long have you been a pilot?
A. Five years.
Q. To what vessel are you now attached?
A. The steamboat New York.
Q. To whom does she belong?
A. To the Camden & Amboy Transportation Company.
Q. They are the libellants?
A. Yes, sir.
Q. How long have you been in the employ of that company?
A. Between eight and nine years.
Q. Were you ever attached to the Fairfield?
A. Yes, sir.
Q. Were you attached to her at the time of the collision between her and the America?
A. Yes, sir.
Q. Do you remember what date?
A. I think it was the 13th day of December, 1866.
Q. Where were you at the time of the collision—in what particular place on the boat?
A. I was in the pilot-house.
Q. What employment was the Fairfield engaged in?
10 A. Towing canal-boats and landing them about the harbor.
Q. In the harbor?
A. Yes, sir.
Q. Did she run to Brunswick?
A. Yes, sir; occasionally.
Q. About what time did the collision take place?
A. About five o'clock in the evening, as near as I can tell.
Q. At that time it was about dusk?
A. Just about.
Q. Had she come from New Brunswick that day?
A. No, sir.
Q. Where had you picked up your tow?
A. From Houston street, New York.
A. When had you left New Brunswick with it?
A. I don't remember that; I cannot tell anything at all about that.
Q. At the time of the collision had, you left your last boat?
A. Yes, sir; at the navy-yard, Brooklyn.
Q. How was the tide?

A. Ebb tide.
Q. After leaving the last boat, where were you bound to?
A. Christopher street, North River.
Q. What kind of weather was it?
A. Clear and cold.
Q. Were there any lights up at the time?
A. Yes, sir; all our lights were up.
Q. How much of a crew did you carry; how many men did you have on board, all told?
A. Eight men, and a woman to cook; the cook made nine.
Q. What part of the river were you coming down after leaving the navy-yard?
A. Coming down as near in the middle of the river as we could get.
Q. Did you see the America before the collision?
A. Yes, sir; I saw her as soon as she left her slip.
11 Q. What ferry does she run on?
A. Fulton ferry.
Q. You say you saw her as soon as she left her slip?
A. I saw her just as soon as she came out of the slip, because I knew one left each slip at the same time.
Q. One left the Brooklyn side, and one left New York?
A. Yes, sir.
Q. The America left which side?
A. She came out of the New York slip to go to Brooklyn.
Q. Do you remember about what point you were opposite at that time?
A. When I first saw the ferry-boat I was about abreast of Market street, New York.
Q. What position at that time did you hold in the river; in regard to the sides of the river, where were you?
A. We were on the New York side?
Q. A little on the New York side?
A. Yes, sir; a little bit.
Q. Can you form an idea of what is the distance between Market street and Fulton ferry?
A. I don't know that I can tell exactly; I never measured it, but I should say it is half a mile or better.
Q. As she left the slip, what was the course of the America?
A. She came right straight out of the slip.
Q. Right straight into the river?
A. Yes, sir.
Q. Did you notice any change in her course?
A. I saw him heading up the river more all the time.
Q. He commenced drawing more up the river?
A. Yes, sir.
Q. When you say up the river, you mean to the east?
A. Yes, sir.
Q. Did you give any signal?
A. Yes, sir; one whistle.
Q. What was the signal you gave?
A. To go to the right.
12 Q. One whistle?
A. Yes, sir; that is, for each one to keep to his own side.
Q. At the time of the blowing of that whistle state how your boat was heading?
A. We were heading a little towards New York.

Q. A little inclined towards New York shore?
A. Yes, sir; a little that way, when we blowed the whistle.
Q. How far should you think the ferry-boat was from you, at the time you blew your whistle?
A. All of 300 yards.
Q. How did she bear from you that time?
A. She was heading a little on our port side.
Q. How did you look to see her?
A. I looked on my port bow to see her.
Q. And she was a little on your port bow?
A. Yes, sir.
Q. At that time, how was she heading, with reference to the Brooklyn shore?
A. She was not heading towards Brooklyn at all then.
Q. Had she got nearly up?
A. No, sir; not exactly up, but she was hauling up all the time.
Q. Was she still angling towards the Brooklyn shore when you blew your whistle.
A. Yes, sir; all the time she was heading up a little towards New York, if anything, coming right straight out.
Q. (By Mr. Silliman.) The Brooklyn boats?
A. The one coming from New York, that wanted to go to New York, came out of the slip and came up in this fashion to me.

By Mr. Beebe:

Q. When you blew your whistle was she still swinging?
Yes, sir.
Q. She was still angling towards the Brooklyn shore?
A. Yes, sir.
Q. She was still angling towards the Brooklyn shore?
A. Yes, sir.
13 Q. It was the America?
A. Yes, sir.
Q. At the time you blew the whistle how was your wheel?
A. A little aport; we were going towards New York all the time.
Q. And you were heading more towards the New York shore?
A. Yes, sir.
Q. When you blew your whistle, did you do anything then with your wheel?
A. I hove the wheel a little more to port.
Q. And slowed her down?
A. Yes, sir, I slowed her. As soon as I blowed the whistle I slowed her.
Q. By what signal did you slow her down?
A. One bell.
Q. Was that signal obeyed?
A. Yes, sir.
Q. Did you receive any answer to your signal from the ferry-boat?
A. No, sir; I didn't receive no signal at all.
Q. After you blew your signal, what was the course of the ferry-boat; what did she do after you blew your whistle and put your wheel aport?
A. She kept on.
Q. Still swinging?
A. Yes, sir.
Q. Did that bring her more towards you or the opposite?
A. Yes, sir, more towards us all the time.

Q. At that point of time, and after you had slowed down, what rate of speed do you think you were going?

A. After we had her slowed, I suppose we were going about four knots and a half or four knots.

Q. After you put your wheel to port, did you at any time starboard your wheel up to the time of the collision?

A. No, sir; I didn't starboard it at all.

Q. Still kept it aport?

A. Yes, sir.

14 Q. What effect did that have on your head?

A. It kept heading us more towards New York all the time.

A. Kept throwing you up more towards New York?

A. Yes, sir, more towards New York.

Q. Before the collision, did you do anything else?

A. Yes, sir, stopped the boat and backed her.

Q. How fast did you think the America was coming on to you?

A. She was coming as fast as she could come.

Q. How fast do you think that was?

A. I think she was coming about 10 knots, I should judge. They go pretty fast, them boats do.

Q. You say you stopped and backed. How far were the vessels apart when you stopped and commenced backing?

A. About 100 yards apart. He headed them right for me.

Q. What period of time was it that you thought there would be a collision?

A. I didn't think there would be a collision at all, until after we were backing some time.

Q. Did you notice, before the America struck you, or your vessel came together, whether she diminished her speed or not?

A. She stopped. She made about two or three turns back.

Q. At the time you struck?

A. Yes, sir.

Q. How near had she got to you before you saw any diminution of her speed?

A. She had got within a length of us.

Q. (By the Court.) Your length or her length?

A. Her length.

By Mr. Beebe:

Q. Did you get any signal from her before she struck you?

A. Yes, sir; two whistles.

Q. How near was she to you at the time those two whistles were blown?

15 A. She was not fifty yards off; very close to us.

Q. What was the position of your boat as to headway at the time she blew those whistles, whether you had stopped or were backing?

A. We were backing when she blew the two whistles.

Q. At that time, was there any way that you could avoid the collision?

A. No, sir.

Q. Could you have obeyed her signal, and kept to the left?

A. No, not then I could not; not when we were backing, we could not very well do it.

Q. Had you any headway on at that time?

A. No, sir; when he struck us we were going backwards.

Q. At the time she blew two whistles?

A. Yes, sir; we were going ahead a little bit.
Q. How much?
A. Very little; we were going slow; our machinery was working back.
Q. Her headway was all stopped?
A. Yes, sir.
Adjourned.

16 U. S. district court, southern district of New York.

Before Hon. Judge Blatchford, May 18, 1870.

THE CAMDEN & AMBOY RAILROAD CO.
*vs.*
THE STEAMBOAT AMERICA, HER TACKLE, ETC.

Direct examination of William H. Radcliffe, continued by Mr. Beebe:

Q. You stated in your examination yesterday that up to the time of the collision you had made about two or three revolutions back?
A. The ferry-boat.
Q. You refer to the ferry-boat?
A. Yes, sir.
Q. How many had your boat made?
A. We had made 10 or 12 turns back; all of 10, and I think 12.
Q. How was the Fairfield heading at the time the boats came together?
A. Headed right towards New York.
Q. Had she got right square on to the shore, or angling towards it?
A. She was angling towards the shore; she was not right square across the river.
Q. Whereabouts did the ferry-boat strike you?
A. She struck us on our port bow.
Q. What part of her hit you?
A. Her bow.
Q. What effect did it have upon your bow and stern?
A. It stove her bow all in.
Q. Did it break the stern, or knock the stern one side?
17 A. Yes, sir; it knocked the stern right around on the starboard side.
Q. How rapidly should you think the America was coming at the time she struck you?
A. That I cannot say.
Q. Did you form any judgment of how fast she was coming?
A. No, sir; I should not like to say; I know she was coming ahead pretty good. She must have been coming ahead pretty good, for we were going backwards. We had sternway on us at the time she struck us, going astern.
Q. Were you really going astern?
A. Yes, sir; we were.
Q. You had overcome your headway, and the tide also?
A. Yes, sir; all stopped and going back.
Q. In reference to the two sides of the river, what part of the river did the collision take place in?
A. It took place a little on the New York side.
Q. More on the New York side?
A. Yes, sir; more on the New York side than it did on the Brooklyn side.

Q. It was to the New York side of the middle of the channel?
A. Yes, sir.
Q. How long were the two vessels in contact?
A. That I could not say.
Q. Did they part directly after they struck, or about how long were they in contact?
A. They might be two or three seconds.
Q. A very short time?
A. Yes, sir; he backed right away from us. We were both backing all the time, and he kept on backing from us.
Q. How long did you continue to back?
A. We stopped once. We backed until we got near the Brooklyn shore, and then the captain stopped.
Q. After the collision?
A. Yes, sir; after the collision.
18 Q. Why did you keep backing?
A. We wanted to back the boat into the dock so that we could get ashore. We didn't want to drown. It was too cold to swim.

By Mr. Silliman:

Q. That was the reason you backed?
A. No; of course not. We backed the boat in so that we could get her as close in as we could.

By Mr. Beebe:

Q. Was there any hail to the America from your boat?
A. Yes, sir.
Q. What was said?
A. We blowed the whistle, and holloaed to them to come and take us off, that the boat was sinking.
Q. What reply did you get?
A. Some one told us to go to hell, or words to that effect.
Q. Did they come to your assistance at all?
A. No, sir; they went right away from us, and never came no way near us.
Q. Where did you finally bring up?
A. Where did we get the boat into?
Q. Yes, sir.
A. A couple of docks below Fulton ferry, on the Brooklyn side. We backed her into the slip there.
Q. When you got there how much water was in her?
A. She was full.
Q. Did she sink then?
A. Yes, sir.
Q. Did any one go down in her?
A. No, sir.
Q. Did you save anything?
A. Not a thing; nothing that I know of.
Q. Was she subsequently raised?
19 A. Yes, sir.
Q. And where was she placed after she was raised?
A. She was towed to Hoboken.
Q. Was she put on the ways?
A. Yes, sir.
Q. Where?
A. At Hoboken.

Q. Did you see her on the ways?
A. Yes, sir.
Q. Was she ever repaired?
A. No, sir.
Q. What became of her?
A. They tore her up.
Q. Did you see the character of the wound when she was on the ways?
A. Yes, sir.
Q. Was there a photograph taken of her?
A. Yes, sir.
Q. Two, were there not?
A. I don't know; I never seen but one. I don't know how many were taken.
Q. (Handing photograph to witness.) Look at that and see if that is the photograph you refer to.
A. Yes, sir.
Q. (By Mr. Silliman.) What do you know about the photograph? Did you see it taken?
A. I saw the man taking it. He took it in Hoboken, in the ship-yard.
Q. Were you right by him?
A. No; I might be off fifty feet from him. I seen him have his box there, and his table-cloth, or whatever it was. I seen him at work.

By Mr. Beebe:

Q. Is that a fair representation of the wound as it was photographed there?
A. Yes, sir; as near as I can tell.
(Photograph put in evidence and marked "Ex. 2," by the court, "May 18, 1869, S. B.")
Q. What should you think was the size of the hole in her bow?
A. You could drive a horse and cart right into her, I should think. Folks on the ferry-boat said they could stand there and see the fires in the furnace.
Q. You say you stopped near the Brooklyn shore, after the collision?
A. Yes, sir.
Q. What did you do that for?
A. We had to stop to let a propeller going up inside of us go under her stern.
Q. Are you a licensed pilot?
A. Yes, sir.
Q. And was at this time?
A. Yes, sir.

Cross-examined by Mr. Silliman:

Q. How long had you been a licensed pilot at the time of this occurrence?
A. In my second year.
Q. What other boats had you piloted besides this one?
A. I piloted the Delaware, the Fairfield, and the New York.
Q. At what point in the river did this collision occur—off what pier?
A. I don't know that. I can't think of the name of the street or of the pier. It was just above the Fulton ferry.
Q. On which side?
A. On the New York side.
Q. How many years have you been running around New York?

A. Altogether about 14 or 15 years; that is, I have been boating 14 or 15 years.

Q. Was this collision off the slip above the Fulton ferry, where the smacks run in?

A. Yes, sir; above the Fulton ferry, on the New York side.

Q. Off the slip above that?

21 A. I don't say it was off the slip above the ferry; I say it was above the ferry.

Q. How far above the ferry should you judge?

A. I should say 100 yards above Fulton ferry.

Q. Above the Fulton-ferry slip?

A. Yes, sir.

Q. Are you confident you were considerably nearer the New York shore than the middle of the river?

A. I know it.

Q. How much nearer the New York shore than the middle of the river, according to your best judgment?

A. That I could not say; I know it was considerable, because I can tell the middle of the river from either side.

Q. According to your judgment, were you half way between the middle of the river and the New York shore?

A. No, sir; I would not say we were quite half way.

Q. One-third of the way.

A. Yes, sir; all of that and more too, likely.

Q. More than one-third?

A. I say may be more.

Q. But all of one third?

A. Yes, sir, and may be a little more.

Q. When you first saw this boat coming out of the slip you say you were abreast of Market street, New York?

A. Yes, sir; I seen her come from Brooklyn first, and I knowed when one left Brooklyn one left New York at the same time.

Q. I understand you to say when you were off Market street, you saw the America coming out of the New York side?

A. Yes, sir; it might have been a little below Market street, somewhere along there—not much below any how.

Q. What rate of speed had you through the water when you were going at that time?

A. About 8½ or 9 knots.

22 Q. How long would it have taken you to run from there to the place you were going to, at the foot of Christopher st.?

A. It would have taken us three-quarters of an hour. I don't know; I could not swear to that, for we might have to stop a good many times, for all I know, which would bother us.

Q. You had landed your last boat?

A. Yes, sir.

Q. You would have had the ebb in the East River, and the flood you would have met in the North River?

A. We had to slack across the docks.

Q. How long after you passed Market street was it that you gave your signal to the America?

A. I had not gone more than a length, or a length and a half, from Market street. I had plenty of steam, and you could hear a whistle blow a mile—half a mile anyhow.

Q. You had just cleared the pier of Market street when you gave the signal?

A. Yes, sir; the length of the steamboat may be a little more for all I know.

Q. What other boats did you see coming out of any other ferries?

A. I don't know which one it was I seen, that came from Brooklyn. I don't know her name. I seen the Bridge street ferry-boat going in her slip on the New York side. That is all I seen.

Q. What ferry slips were there between Market street and Fulton ferry slip, where you saw the America coming out?

A. South 7th street, Williamsburgh, Hunter's Point, Bridge street, and Catharine street.

Q. And you saw no boat come out of any of those ferries' slips?

A. No, sir; no boats at all.

Q. Were there any other vessels in the river between you and the America?

A. I seen a propellor come along after the collision. We had to stop for him.

Q. Between you and the America were there any other vessels?

23 A. No, sir, not a vessel.

Q. When did you begin to edge in towards the New York shore?

A. As soon as I blew the whistle I headed in gradually. I didn't go in all at once; at least so that she would bear that way a little bit.

Q. How much were you heading towards the New York shore before you blew your whistle?

A. We were coming straight down.

(Question repeated.)

A. We were right in the middle of the river, coming straight down, and when I blew the whistle I put the wheel aport, so as to sheer the boat gradually towards New York. I didn't sheer her all at once, but so that she kept angling slowly towards New York.

Q. (By Mr. Beebe.) You kept that port on all the time.

A. Yes, sir.

By Mr. Silliman:

Q. How soon after you blew did the America blow?

A. She didn't blow until we were backing, and then she blew two whistles.

Q. How long did you slow before you stopped?

A. I could count ten, easy enough; I don't know how long that would be—10 seconds, I suppose.

Q. How long after you stopped before you backed again?

A. It was about the same length of time—about ten seconds.

Q. Did you starboard your wheel at all?

A. No, sir; didn't put it astarboard at all.

Q. From the time you passed Market street?

A. No, sir; from the time I blew the whistle.

Q. How many turns back do you say you think you had made?

A. We had made all of ten, and maybe twelve, as near as I can tell.

Q. How far apart were you when you stopped?

A. About 100 yards, maybe a little more.

24 Q. How near was the America before she stopped?

A. She was right on top of us before she stopped; well, not on top, but coming right close to us.

Q. How long was it before you stopped that she blew her two whistles?

A. We were backing when she blew her two whistles.

Q. How long after you had blown your first whistle was it before she blew her two?

A. I don't know how long it was; I know we were backing.

Q. I want to get the length of time that elapsed between the time you blew your whistle and the time she answered it.

A. That I cannot say. I had no clock to tell the time.

Q. Was it right away, or an interval of ten minutes or ten seconds?

A. I won't say anything about ten seconds or ten minutes. I don't know long it was.

Q. You can remember that after a little reflection, can you not?

A. I would not like to say.

Q. Did she answer with the two whistles right away?

A. No, sir; it was not right away.

Q. How many yards had you run before she gave her two whistles in reply?

A. We had run about twice the length of the steamboat.

Q. Before she made the two whistles in reply?

A. Further than that we ran before she blew her whistles.

Q. About how long a time intervened before your blowing your one whistle and her answering with two?

A. We were down below Dover street; I cannot tell how long.

Q. You had run about how many lengths before she blew her two whistles?

A. About four of our lengths before she blew her whistles, and may be more.

Q. How far off from you was she when she blew these two whistles?

25 A. She was pretty close to us; I could not tell how far she was apart.

Q. You cannot judge at all how far she was off?

A. I would not like to say. I might not say the truth, and might not come nowhere near it, and might come near it. I would not like to say that.

Q. (By Mr. Beebe.) Give the best estimate you can.

A. We might have been 50 yards off when she blew two whistles.

By Mr. Silliman:

Q. How long was that, after her blowing two whistles, before the collision?

A. Very close together. We were so close together that I could not go the other side of her. He blowed, but it was of no use then.

Q. How long after you blew your first whistle did you slow?

A. A. We slowed before we blew the whistle, or just after we blew the whistle, I should say.

Q. Which do you mean?

A. I told you just after we blew the whistle.

Q. After you pulled your bell to slow, how long was it before you stopped?

A. We might have made four or five revolutions before I rang to stop her.

Q. Then you slowed four or five revolutions to stop, and how long after stopping before you backed?

A. I could about count ten, or somewhere along thereabouts.

Q. You say that the bow of the America struck the bow of the Fairfield a little on the port side. How near were they line and line, or how near were they obliquing, or sideways? How did the two boats go; pretty much head on?

A. At the time they hit they were head on.

Q. Pretty near in a line, the two boats were?

A. Yes, sir.

26 Q. What is the height of your boat from the floor on which the boiler is from the inside?

A. From the ceiling to the deck, do you mean?

Q. Yes.

A. I cannot tell you; I never measured it.

Q. What do you suppose to be the height from the ceiling to the deck—the depth of the hold?

A. About 8 feet, or somewhere along there; I don't know exactly; it might have been nine feet, for all I recollect.

Q. Who was *was* it made that polite reply to you from the America, telling you to go there before your time?

A. I don't know; some one in the pilot-house. It sounded that way. I don't say it was there, but I say it sounded from there.

Q. After the collision took place, will you state exactly what you did in regard to going ashore with your vessel?

A. We kept backing the boat. We didn't stop her from the time I commenced backing her before the collision until we got near Brooklyn, and then we had to stop for a propeller that was going up inside of us, under our stern—going up the East River, so that when he got by we backed her on into the slip.

Q. The propeller didn't delay you any?

A. We had to stop for her.

Q. How long?

A. Not long; a very small space of time.

Q. You went sternforemost, then, all the way across?

A. Yes, sir, we had to. If we had went headforemost we would not have got across.

Q. How long after she sank alongside the wharf before she was taken to Hoboken?

A. I cannot tell you that. I think it might have been a week before they undertook to raise her. I could not say as to that.

Q. Were you present when she was lifted?

A. No, sir; I would go there once and awhile, but would not be there all the time.

Q. Did you see her taken around to Hoboken?

A. No, sir.

27 Q. You don't know how she went?

A. I know she was towed there; she could not get there any other way very well.

Q. Do you know what slip it was you went into after the collision?

A. No, sir, I don't know the slip. It was the second one below the Fulton Ferry, on the Brooklyn side, I think.

Q. Who was with you in the pilot-house at the time you saw this?

A. Myself.

Q. No one else.

A. No, sir.

Q. Will you be kind enough to state who your officers and crew consisted of—who were the officers?

A. Captain Quick and Peter Van Kuren, engineer and myself.

Q. Who were the others?

A. Myself as pilot. John Quick was captain, and Peter Van Kuren was engineer, Thomas Furguson, fireman, William Boyce, fireman, Abraham Quick, deck-hand, James Quick deck-hand, Thomas Fitzsimmons, deck-hand, and Mrs. Patterson, cook.

Q. Where were these various parties at the time?
A. That I cannot say, sir.
Q. Were they not below deck getting their supper?
A. We didn't get below deck to get supper. We eat supper on deck. The saloon was on deck, and it was not below at all.
Q. Where was that saloon?
A. Aft.
Q. Were they not at supper at that time?
A. I cannot swear that the were; the supper bell rang.
Q. How long before the collision?
A. It might have been 15 or 20 minutes, maybe more for all I know.
Q. Was there any bulwark around the forward part of the boat?
A. No, sir.
28 Q. No rail?
A. No, sir.
Q. Just a flat, open, flush deck?
A. Yes, sir.
Q. How many feet up from the water should you say that deck was?
A. Her bow?
Q. Yes. I don't mean the top of your stern, but the deck.
A. You mean from the deck to the water line?
Q. Yes, sir.
A. It might be four feet. Then it got a little lower, as you went along midships, and after you got past midships it got a little higher again.
Q. The forward deck was four feet, and less, above the water?
A. Yes, sir; as near as I can tell; I never measured it.
Q. Where was that pilot-house situated?
A. On deck.
Q. Was it not on the upper deck?
A. Yes, sir.
Q. Had you a hurricane deck?
A. Yes, sir.
Q. It was on a line with the hurricane deck?
A. Yes, sir, it was on the hurricane deck.
Q. Forward?
A. Yes sir.
Q. (By Mr. Beebe.) About how far from the stern?
A. I should say 25 feet, may be 30.

By Mr. Silliman:

Q. Was the first deck clear up to the line of the pilot-house?
A. What do you mean?
Q. There was no other building forward of the pilot-house?
A. No, sir.
Q. Do you know the age of the Fairfield at that time?
A. No, sir; I don't know her age.
Q. You know nothing about that?
29 A. No, I don't know her age.
Q. How long had you known her?
A. About 12 years, I should judge; may be a little longer.
Q. How long had you piloted her?
A. My second year.
Q. Had you been on board of her all the while?
A. Yes, sir.
Q. When you went over to Brooklyn, after the collision, how did you lie when you were backing? which way did your stern point?

A. We backed right square across.
Q. Square across the river?
A. As near straight as we could back.
Q. Was it actually nearly straight across, or did your bow or stern change either way?
A. Our bow might have swung down a bit, not much; enough to back her square into the slip.
Q. So straight across that you went square into the slip?
A. Yes, sir.

Redirect:

Q. She is a side-wheel boat?
A. Yes, sir, she was.
Q. (Illustrating.) Suppose that to be the New York side, and that the Brooklyn side, at the time she actually came in contact with you, which way was your vessel heading?
(The witness made a diagram showing the way his vessel was heading at the time both vessels came in contact, which was put in evidence, and marked by the court, Ex. No. 2, May 18th, 1869, S. B.)

JOHN QUICK sworn on behalf of libellant.

Examined by Mr. Beebe:

Q. What is your employment?
30 A. Captain on the steamboat Fairfield. I am captain of a tug-boat now.
Q. How old are you?
A. Over 50.
Q. How long have you followed the water?
A. Forty years and upwards.
Q. Of what vessel are you captain now?
A. Captain of the tug-boat Amboy.
Q. In the employ of the Camden & Amboy Co.?
A. Yes, sir.
Q. How long have you been in their employment?
A. Nearly 30 years.
Q. Most of the time you followed the water has it been in and around the port of New York?
A. Yes, sir.
Q. Were you captain of the Fairfield at the time of this collision?
A. Yes, sir.
Q. How long had you been connected with the Fairfield?
A. Nine or ten years.
Q. About what time did this collision take place?
A. About 5 o'clock in the afternoon, between 4 and 5, about dusk.
Q. It had got to be dusk?
A. Just about dusk.
Q. Had you your lights lighted?
A. Yes, sir.
Q. Where had you come from last?
A. I came from the navy-yard, Brooklyn. I landed a boat there.
Q. Where was the boat bound?
A. Bound to Christopher st., North River.
Q. I suppose she was light.
A. Yes, sir, water and everything out of her tanks, so that she could be handled very easily and very quick.

Q. In coming down the East River, what was the course of the steamboat, in reference to the two shores.

A. About east by north.

31 Q. I want to know in reference to the shore.

A. About the middle of the channel.

Q. Were you on deck at the time of the collision?

A. I was on deck before the collision happened.

Q. Had you been below?

A. I was on deck then, but had been in the cabin, going to get my supper. I heard the bell rung, and I just stepped out.

Q. Where was the Fairfield at the time you went below to get your supper?

A. In the middle of the river, about off Jackson street.

Q. About off Jackson street when you went below?

A. Yes, sir.

Q. Who were getting their supper at the same time you were?

A. I didn't notice the crew. I generally sit down and eat my supper as quick as I can, and get up.

Q. There were some there besides you?

A. Yes, sir.

Q. What was the first thing that attracted your attention?

A. As soon as the whistle blowed.

Q. A whistle from your boat?

A. Yes, sir.

Q. What was it?

A. One whistle.

Q. A single whistle?

A. Yes, sir; a single whistle.

Q. How was that whistle blowed?

A. It was blown once.

Q. Was it a distinct, loud whistle?

A. Yes, sir.

Q. What did you do then?

A. I didn't do anything until the bell rang.

Q. You continued to sit until the bell rang?

A. Yes, sir.

Q. What was that?

A. To slow, and stop, and go back. I heard the bells distinctly.

32 Q. There were three bells rung?

A. There were four bells.

Q. When the bell came to slow what did you do?

A. I didn't get right up that minute, but when the next bell rang I got up.

Q. You heard a bell to slow?

A. Yes, sir.

Q. Then a bell to stop?

A. Yes, sir.

Q. What was about the lapse of time, as near as you could judge, between the bell to slow and the bell to stop?

A. Well, about ten seconds. It was not ten seconds, hardly, before they rang the other bells to go back.

Q. The first bell to slow was nothing unusual?

A. No; the next bell was to stop, and the other two to back.

Q. When the bell rung to back, what did you do then?

A. I didn't get up exactly until after the two bells to back; then I got upon deck, and she was working back.

Q. How rapidly after the bell to stop came the bells to back?
A. Right away.
Q. Where did you go then?
A. When the bells were rung to back, they started the engine back before I left the cabin, and she was backing at the time I got through and got on the forward deck.
Q. Did you go through the engine-room?
A. I went right through the gangway.
Q. Where is the engine-room?
A. The engine-room is aft of the shaft.
Q. (By the Court.) Did you go into the engine-room or by it?
A. By it.
Q. (By Mr. Beebe.) And she was backing when you passed?
A. Yes, sir, she was backing before I left the cabin.
Q. Where did you go to?
A. I went forward and got on her deck.
33 Q. You went on the forward deck?
A. Yes, sir.
Q. When you got on the forward deck of your steamboat, did you see the America?
A. Yes, sir; plain.
Q. At that time did you observe how the Fairfield was heading, in reference to the New York shore?
A. Yes, sir.
Q. How was she heading?
A. About at an angle of nearly 45 degrees.
Q. Towards the New York shore?
A. Yes, sir; nearly that.
Q. Where was the America, in reference to the Fairfield?
A. She was then a little over her length off, and she blowed her two whistles.
Q. When you got on the forward deck?
A. She was within about a length of us.
Q. Leaning up on your port bow?
A. Yes, sir.
Q. As you were angling in?
A. Yes, sir; she was angling the same way we were.
Q. She was a little inclining towards the New York shore?
A. Inclining up, angling towards us.
Q. Angling up, and a little towards the New York shore?
A. Yes, sir.
Q. That was the position when you went on the forward deck?
Yes, sir.
Q. At that time had she blown any whistles?
A. No, sir; as I got on the forward deck she blew the whistle; then, when I got on the upper deck, she struck. It was then too late.
Q. About how many revolutions had your engine made at the time the vessels came together?
A. I guess 10 turns, and may be more, to the best of my knowledge. I am pretty well posted with her, and know exactly what she would do.
34 Q. How long had you been captain of her?
A. Ten years.
Q. At that time, in reference to the shore, which way was she going?
A. We were going astern.
Q. Actually had sternway on?

A. Yes, sir.
Q. Your Fairfield was a side-wheeled boat?
A. Yes, sir; she was a side-wheeled boat.
Q. About how long was she?
A. She was 155 feet, I believe; somewhere near that, if I am not mistaken.
Q. At the time you went on to the forward deck, how rapidly was the America coming upon you?
Q. Coming pretty fast.
Q. Give me your best judgment as to her rate of speed.
(Not answered.)
Q. (By Mr. Silliman.) Did you notice anything about it?
A. I didn't notice that. She was coming pretty fast.
(By Mr. Beebe.) You noticed her coming?
A. Yes, sir.
Q. And that she was coming fast?
A. Yes, sir.
Q. Can you give us any idea of about what rate of speed you think she was coming at?
A. They run about 10 or 15 miles an hour, and I think she was running about 9, or 10, or 11 knots an hour.
Q. Before she struck you, how much, if any, was her speed diminished?
A. I don't know. We were going stern foremost. I cannot tell you.
Q. Was it diminished?
A. It must have been diminished some, but not much.
Q. Did she take any turns back before she struck you?
A. That I cannot say—that I would not swear to.
Q. Whether she took many turns back or not?
A. No, sir. I would not swear to it for all the United States of America.
35 Q. How heavy a blow was it?
A. It was not a very heavy blow—a pretty heavy blow.
Q. Suppose at the distance of two lengths, the America had ported, would there have been any collision—hard aport?
A. She would have been quick enough almost to have not done much damage—the ferry-boat would.
Q. At three lengths, if she had ported, would she have cleared you?
A. Yes, sir: if she had ported her helm at 3 lengths, she would not have done any damage.
Q. Did you see any variation in the course she was running upon, up to the time she came into you?
A. No, sir; I had not time for that. She blowed her whistle.
Q. Did you observe, or did you not observe, whether she changed her course or not?
A. No, sir. I didn't take notice of that, you know.
Q. Did you answer how heavy the blow was?
A. Yes, sir; a pretty heavy blow.
Q. How near were the vessels together after the blow was struck?
A. And as soon as she could back away from us and go ahead—a very short time.
Q. Were you backing also?
A. We were backing. We never stopped backing. I had to stop backing until I got into the slip, on account of the propeller going up inside of us.
Q. When you got near the Brooklyn shore?

A. Yes, sir.
Q. Why did you back?
A. Because I knew it would not do to go ahead with the bow knocked out; it would have drowned every man on board.
Q. You backed into a slip where?
A. Down the second pier below the ferry-dock.
Q. Did you notice how close you were to the New York shore at the time the vessels came together?
36 A. Yes, sir; about the middle of the river; may be it might be a little more to the New York shore, but I think about the middle of the river.
Q. Who directed her to continue backing?
A. I kept her backing myself. I took charge of her.
Q. You took charge of her and continued backing?
A. Yes, sir; just as cool and calm as if I was in this room.
Q. Did any one from your boat hail the America?
A. I believe the pilot did. I didn't pay any attention to that.
Q. Did you hear any reply?
A. Myself? I didn't pay any attention. I heard my man singing out to them that she was sinking—to the steamboat America.
Q. Did she come to your assistance?
A. No, sir.
Q. When you got into the slip, how much water had you?
A. She was full, and when I got to the dock, and holloaed down to the engineer to make his escape, he ran forward and ran right into the water, and they threw a line off the slip down on to him, and the foreman hauled them up; it was a very cold night, and I got the lady off, and the deck-hands off, and got off myself. I was the last man that left the boat.
Q. Was the weather very cold?
A. Very cold, indeed. A man would perish in no time at all, if he would strip off.
Q. How deep was the water in the hold where you got them off?
A. She was chuck full, full up to the lines. She went down head-foremost.
Q. How long after you got in the slip before she went down?
A. She went right down.
Q. Able to save anything?
A. Never saved anything. We were very thankful to save the people's lives.
Q. How long after that was she raised?
37 A. She was raised immediately afterwards in the spring. They worked at her nearly all winter.
Q. Trying to get her up?
A. Yes, sir.
Q. Did you see her raised?
A. I didn't see her raised.
Q. Did you see her after she was raised?
A. No, sir.
Q. Did you see her on the ways?
A. No, sir; I did *you* see her after she was hauled up on shore, part of her deck. I didn't see her hull.
Q. You could not tell anything about the hole?
A. No, sir.
Q. You went on board of another boat after that?
A. Yes, sir.

Q. What boat were you transferred to?
A. I was transferred to the Bordentown.
Q. At the time those boats came together, place the Fairfield.
(The witness drew a diagram of the position of the two vessels at the time of the collision, which was put in evidence and marked by the court "Ex. No. 3, May 18th, 1869, S. B.")
Q. When those two whistles came from the America, was there any way you could have gone to the left and avoided her?
A. It was too late for any boat to do anything only to back.
Q. That is what you were doing?
A. That is what we were doing.

Cross-examined by Mr. Silliman:

Q. Are you sure that your lights were set?
A. Yes, sir; because when she went down two of them, where the water didn't put them out, in 42 feet of water on the flag-staff and on the gallows-frame, were up.
Q. How long had those lights been set?
A. They were set just before dusk.
38 Q. Before you left the Wallabout?
A. Before we left the Wallabout.
Q. Was the ferry-boat lighted?
A. If I am not mistaken, I think she was.
Q. How long would it have taken you to have gone from Market street to Christopher street, as the tides then were?
A. It would take us over three-quarters of an hour. I know pretty nigh what she will do.
Q. When you came forward on the deck, how many feet off from you was the America?
A. Just about her length, and then she blowed her whistle.
Q. That was the first whistle she blew?
A. That is the first whistle I heard blown. It was blown twice.
Q. That is the only whistle you heard?
A. That is the only whistle I heard from her.
Q. Did your whistle blow more than once?
A. No, sir.
Q. How do get up to the pilot-house?
A. We had steps right up outside.
Q. Right up in front?
A. Yes, sir.
Q. How was your boat heading at the time you went below to get your supper?
A. The middle of the river, heading west.
Q. How far was her position changed when you came on deck, and in what respects was it changed?
A. She was heading on the New York shore.
Q. How much more below the New York shore than when you went below?
A. About 45 degrees more.
Q. Where were you off the New York shore at the time you came on deck?
A. I was right off Dover street, pretty nigh.
Q. That is, when you came on deck?
A. Yes, sir.
Q. Is that the point where the collision took place?
39 A. Yes, sir; between Dover street and the other slip, as near as I can tell the slip below it.

Q. What slip is that?

A. There are two or three slips between that and the Fulton ferry. It was right off Dover street, just at the edge of Dover street and James slip.

Q. How far is Dover slip below the Catharine street ferry?

A. It is 4 or 5 slips below.

Q. What is the slip next below Dover?

A. Peck slip we used to call it.

Q. Is that the slip next below Dover street?

A. Not exactly. There is one between that; I forget the name of that street.

Q. Do you forget the name of the slip?

A. Yes, sir; I know the name of the slip well enough, but I forget the name of it.

Q. You say the collision took place off that slip next below Dover st. pier?

A. About the middle of the river.

Q. Just about below Dover st.?

A. Somewhere about there.

Q. You state your boat was then going astern?

A. Yes, sir.

Q. How do you know that?

A. Because I have been on the boat too long. You cannot fool me on any boat, if you put me on a boat as long as that. I know exactly what she will do.

Q. How many turns back will give that boat stern-way when she is going at full speed?

A. About four turns back, running against the tide, you can stop her.

Q. That will give her stern-way by the land?

A. Yes, sir; that will stop her.

Q. How many turns back will give her stern-way?

A. Five turns will give her sternway.

Q. Did you count the number of turns she had made back at that time?

A. No, sir.

40 Q. That is when you were going against the tide?

A. Going with the tide it will stop her—light, not with a tow.

Q. And then how many turns will give her stern-way against the tide, so that she will go not only stern-way through the water but by the land? How many turns would you have to give her to give her stern-way by the land?

A. Five to six turns.

Q. Against the tide?

A. Yes, sir; I don't care how the tide is.

Q. Five or six turns will give her way against the tide?

A. Yes, sir.

Q. In how long a time would that be done?

A. That would be done in a very short time. It won't take a minute to do it.

Q. Half a minute?

A. It won't take much over half a minute—about that time. I have run her wide open into the slip and stopped her, many a time.

Q. You didn't count the turns back?

A. No, sir.

Q. How many turns back would enable the America, with the tide to help her, to get stern-way?

A. I do not know, sir. I don't know what that boat will do exactly.
Q. How many turns back do you suppose, from your knowledge as a steamboat-man, with the ebb-tide to help her, would be required for the America to get stern-way?
A. About four turns. I don't know the time, because some boats take more time to back than others. Some boats will back half an hour, and won't stop their headway.
Q. What is the width of the river across at Dover street?
A. I never measured it. I ran it a thousand times, night and day, and I never measured it.
Q. You have no opinion what the width of the river is?
41 A. No, sir; water looks a very short distance from what it does on land.
Q. Did you make any hail or signal yourself to the America?
A. No, sir.
Q. How long had you known the Fairfield?
A. I have known her for 30 years and better.
Q. Where did she run originally?
A. She ran to Bridgeport—New Haven.
Q. What was the tonnage of your boat then?
A. I believe it was 250 tons, old tonnage, if I am not mistaken.
Q. What is the length of her beam?
A. Her beam is 23 feet beam, without her guards, if I am not mistaken.
Q. (By Mr. Donohue.) That is the hull?
A. Yes, sir.

By Mr. Silliman:

Q. What rate of speed were you running at when you went below?
A. About 8 knots and a half.
Q. What was the highest speed your boat could make?
A. About between 9 and 10 knots, sometimes.
Q. Who steered the boat from the time of the collision when you went over to the Brooklyn shore?
A. My pilot.
Q. I didn't understand you that you did it?
A. No, sir; I did not.
Q. But your pilot?
A. Yes, sir.
Q. And you gave the directions?
A. Yes, sir.

THOMAS FURGUSON, sworn on behalf of libellant.

Examined by Mr. Beebe:

Q. You follow the water for a living?
A. Yes, sir.
Q. How old a man are you?
A. About 35.
42 Q. How long have you followed the water?
A. About 16 years.
Q. To what boat are you attached now?
A. The steamboat New York.
Q. How long have you been employed by the Camden & Amboy Railroad Company?
A. About 16 years.
Q. Were you on board the Fairfield at the time of the collision?
A. Yes, sir.

Q. In what capacity were you there?
A. Fireman.
Q. Is that your business—fireman?
A. Yes, sir.
Q. How long have you been a fireman?
A. About 13 years.
Q. During that time have you ever been in the habit of working engines?
A. Yes, sir.
Q. Where were you at the time of this collision?
A. In the Fairfield's engine-room.
Q. Is that engine-room on deck?
A. Yes, sir.
Q. When had you gone into the engine-room?
A. The supper-bell rang.
Q. After the boat left the navy-yard?
A. Yes, sir.
Q. Who was the engineer?
A. Peter Van Kuren.
Q. Did you relieve Van Kuren to get his supper?
A. At all meals—at all times.
Q. Did you notice where the boat was at the time you went into the engine-room?
A. Before I went in I noticed Captain Quick round her to, straight down the middle of the river.
Q. After you went into the engine-room, did you hear the whistle?
A. Well, not right away.
Q. After you got in there?
A. Yes, sir. I heard one whistle blown.
43 Q. From the Fairfield?
A. From the Fairfield.
Q. One or more, was it?
A. Only one.
Q. A single whistle?
A. Yes, sir.
Q. Distinct and loud, was it?
A. Yes, sir.
Q. Did you receive any signal after the whistle?
A. No, sir.
Q. Any bell?
A. Well, yes, sir; a few minutes after; very shortly.
Q. Very shortly after a bell was rung?
A. Yes, sir.
Q. How many times first?
A. One bell to slow.
Q. Did you slow her down?
A. Yes, sir.
Q. Immediately?
A. Yes, sir.
Q. Did you unhook her?
A. When I got the other bell, sir.
(Objected to.)
Q. What was the next bell you got?
A. One to stop.
Q. Do you remember about how long time transpired between the bell to slow and the bell to stop?
A. A very short time.

Q. When the bell came to stop, what did you do?
A. I unhooked her.
Q. After that did you work her by hand?
A. Yes, sir.
Q. What was the next signal you received?
A. To back her slowly. It was the hooking-on bell.
Q. Was that order obeyed promptly?
A. Yes, sir.
Q. Did she back?
A. Yes, sir.
44 Q. Did you feel the collision?
A. I did.
Q. Was the blow heavy?
A. All but strong enough to knock you off your feet.
Q. At the time you felt the blow, about how many revolutions back had your engine made?
A. About five.
Q. Was there anybody helping you to work the engine?
A. No, sir.
Q. After the collision, did anybody come to you?
A. Yes, the engineer came.
Q. Go on, and state what was done?
A. He came into the engine-room and took hold of the starting-bar, and told me to go down below and put the bilge-injection on. We was backing then. I went down below and put it on, and I told him I did not think——
(Objected to.)
Q. What did you find out below?
A. I found that the water was coming in so fast that she would not stay up ten minutes, and I got out of there as quick as I could.
Q. What were you doing with the engine?
A. The engineer continued to back her, kept backing her.
Q. Where did you finally bring up?
A. At the second slip below Fulton Ferry.
Q. You say your engine-room is on deck?
A. Yes, sir.
Q. When you got into the slip, how much water had you?
A. She was full?
Q. Were you able to save anything.
A. No, sir; lost everything.
Q. Did you hear any hail from your vessel to the America?
A. I did. We sung out that we was a-sinking, and the reply was, "Go to hell and sink."
Q. In putting on the injection-pipe, did you get into the water?
A. Yes, sir.
45 Q. How deep was the water then?
A. About half way up my thighs.
Q. Did you see the hole?
A. Yes, sir.
Q. On which side was it?
A. It appeared to be on her port bow.

Cross-examined by Mr. Silliman:

Q. How many firemen were there on board that boat?
A. Two.
Q. Who was the other?
A. William Boise.

Q. Where was he at that time?
A. I believe he was home.
Q. Then you were the only fireman on board at that time?
A. Yes, sir.
Q. How many engineers were there?
A. One.
Q. Was there any assistant engineer?
A. I was the assistant engineer.
Q. Was there any assistant engineer other than the fireman?
A. No, sir.
Q. The boiler was below deck?
A. Yes, sir.
Q. And the engine on deck?
A. Yes, sir.
Q. Was there anybody below at the time you took the engineer's place?
A. No, sir.
Q. You say that before you went into the engine-room you noticed that the boat was in the middle of the river. What led you to notice that?
A. Well, the East River is kind of dangerous, with ferry-boats and schooners, and I always keep a bright lookout there.
Q. The fireman keeps a bright lookout?
46 A. Well, if you are upon deck you can look ahead and tell whether there is anything or not.
Q. Was that any part of your business?
A. No, sir.
Q. Did you take any particular notice at that time, or is it from present recollection that you speak?
A. There is no present recollection at all about it.
Q. Had you, at that time, any occasion to take any particular notice, or do you speak from your general recollection?
A. Well, no, sir; I had no occasion then to take any particular notice.
Q. Then, when you say that you were in the middle of the river at that time, you say, in looking back and stating as nearly as you can recollect at this distance of time?
A. Yes, sir.
Q. Where were you when you heard the whistle from the Fairfield?
A. In the engine-room.
Q. That was one whistle.
A. Yes, sir.
Q Did you hear any whistle from the America?
A. I did not.
Q. After you heard the whistle from the Fairfield, how long was it before you got your first bell to slow?
A. A very short time; about half a minute; not quite that, I guess.
Q. How long after you got the bell to slow did you get the bell to stop?
A. Right away after.
Q. And how long after the bell to stop did you get the bell to back?
A. Right away. The bells came only a little distance apart.
Q. Did you see the America?
A. I saw her after the collision was done, not before.
Q. You say you got a signal to "back strong;" how is a signal to back strong different from any other signal to back?
A. It is a small bell like a dinner-bell.

47 Q. That is a special signal to back her strong?
A. Yes, sir; for the engineer it is.
Q. The blow, you say, was so violent that it nearly knocked you off your feet?
A. Yes, sir.
Q. Would you have fallen but for holding on to something?
A. I had hold of the starting-bar.
Q. Only for that would it have knocked you down?
A. It kind of jarred me back; it jarred me astern.
Q. So that you were thrown from the bow, not towards it?
A. Towards the stern; I have told you.
Q. Was it a pretty hard push against the starting-bar?
A. Not so very hard.

By Mr. Beebe:

Q. When you got this jingle-bell to back strong, were you then backing
A. Yes; I had made several turns back before that was rung.

By Mr. Silliman:

Q. Who was it that make that impolite reply to you—told you to "go to hell?"
A. Some person on the ferry-boat; I don't know his name; I did not see him.
Q. How far is the engine-room where you stood aft from the ladder that you go up to the pilot-house?
A. When I heard this sung out I was on the forward deck.

By Mr. Beebe:

Q. Then you saw how far you were from the New York shore.
A. No, sir; I did not look around at that time.
Q. After Mr. Van Kuren came to work the engine, where did you go?
48 A. I went forward and told the captain to go on backing the boat. Then we sung out that we was a-sinking, and the reply was, "Go to hell and sink."

By Mr. Silliman:

Q. Who sung out that you was a-sinking?
A. One of the deck-hands, after I told him; his name was Thomas Fitzsimmons.

By the court:

Q. This was after you had been down to this injection-pipe?
A. Yes, sir.
Q. Then you went out and told the captain and these other men that you had been down there, and that the boat was sinking, and then Fitzsimmons hallooed that you were sinking and got that reply?
A. Yes, sir.

PETER VAN KUREN, sworn.

Examined by Mr. Beebe:

Q. What is your business?
A. Boating.
Q. You are by profession an engineer?
A. Yes, sir.
Q. How old are you?

A. About 50.
Q. How long have you followed the water?
A. About 25 years.
Q. How long have you been an engineer?
A. About 20 years.
Q. To what boat are you now attached?
A. The New Brunswick.
Q. Does she belong to the Camden & Amboy Company?
A. Yes, sir.
Q. How long have you been in their employ?
A. About twelve or fourteen years.
49 Were you on board the Fairfield after this collision, at the time she was sinking?
A. Yes, sir.
Q. How long had you been on the Fairfield at that time?
A. Altogether, about sixteen years.
Q. Do you know the witness Thomas Ferguson?
A. Yes, sir.
Q. How long had he been with you at that time?
A. At that time, eight or nine years.
Q. During that period had he been in the habit of working the engine?
(Counsel for respondents objected on the ground that Ferguson's capacity as an assistant engineer, not having been attacked, could not be properly testified to at this stage.
The court overruled the objection, holding that the plaintiffs had a right to prove affirmatively that their boat was properly manned.
(Exception by respondent's counsel.)
A. Always in my absence.
Q. Where were you?
A. I had just set down at the table to get my supper.
Q. When you left the engine who relieved you?
A. Ferguson; he always did.
Q. Had he been in the habit of working the engine in your presence?
A. Yes, sir; very often.
Q. Did you notice where the Fairfield was when you went to tea?
A. No, sir; I did not go outside.
Q. Did you hear the whistle from the Fairfield?
A. Yes, sir.
Q. Where were you when you heard that whistle?
A. Sitting at the table.
Q. What was that whistle?
A. Only one.
Q. A loud whistle?
50 A. Yes, sir; a good loud whistle.
Q. Where were you sitting? Could you hear the bell?
A. Oh, very plain; it was a large gong.
Q. What was the first signal that you heard after the whistle?
A. A bell rung to slow her.
Q. Have you now any recollection as to the time that elapsed between the single whistle and the bell to slow?
A. I would have to guess at it, but it could not be over a half a minute, I think. It might be a little over, though. It has got to be guessed at.
Q. Then came a bell to slow?
A. Yes, sir.
Q. What was the next signal?

A. To stop her.
Q. What is that indicated by?
A. One bell.
Q. Do you now recollect what time elapsed between the bell to slow and that?
A. Very little; about as long as it would take a man to put his hand down; as long as you would be counting two.
Q. 10 or 15 seconds?
A. It might have been as long as that.
Q. What followed that?
A. Two bells, to back her.
Q. Did you leave your supper-room at any time?
A. Yes, sir.
Q. When?
A. After I heard the alarm-bell, to back her strongly.
Q. What bell is that?
A. It is a little bell that we use to hook her on with, a jingle bell. I then started for the engine-room, because I expected there was something ahead. When I got about half-way to the engine-room the boats came together and partly knocked me off my feet, as I was not aware of its coming.
Q. Where did you go?
A. I went down into the engine-room and took the starting-bar from the man that was working it.
51 Q. Did you find Ferguson working?
A. Yes, working her back very strong.
Q. How was he doing it?
A. As well as it could be done—raising the valves as high as they could be raised with the bar.
Q. How many revolutions were there from the time the bells came to back until the jingle-bell rang to "back strong?"
A. I should think six or seven.
Q. Between the time the jingle-bell rang to "back strong" and the collision, how many revolutions was there time to make?
A. Probably, two or three.
Q. Did you hear any whistle from the America?
A. No, sir; I did not hear any at all from where I stood; you couldn't very well.
Q. When you got to the engine-room, what did you do?
A. I took the starting-bar myself.
Q. What did Ferguson do?
A. I sent him below. We had a bilge injection that led from the engine to the hull to take the water out in case of a leak.
Q. How long do you think he was absent?
A Not a minute.
Q. Did you see his condition when he came up?
A. Yes, sir.
Q. How did he seem to be, as to being dry, or otherwise?
A. I didn't know that he was wet. I didn't look at him. I don't think he was wet. I don't think he went in the water.
Q. Where did he go then?
A. He went forward.
Q. What did you do?
A. I continued to back her.
Q. Did you at any time receive a signal to stop and back?
A. There was one bell rung to stop her, after we got pretty well into the shore, I think.

Q. Then did you receive a signal to back again?

A. Right away.

52 Q. And you backed into the slip?

A. Yes, sir.

Q. How much water was there in her then?

A. Up to the decks. The fire was out in the furnace.

Q. How did you get out?

A. They throwed a heaving-line down from the bows of the ship then.

Q. From which deck did you get on to the slip?

A. From the main-deck. The water was then about knee-deep on it.

Q. Did you hear the America's hail?

A. No, sir. In the engine-room, when the engine is to work—the exhaust—you would not hear a man talk ahead of you.

Q. How long do you think it was from the time that you heard the first whistle of the Fairfield up to the time that you felt the concussion of the blow?

A. It might have been a little over a minute; that is mere-guess-work, though.

Q. When you went to your supper, about how many revolutions was the Fairfield making?

A. I suppose she might have been making twenty.

Q. What is her full speed?

A. She can make 26 turns with 25 lbs. of steam.

Q. About how fast would that drive her?

A. She would go 10 or 12 knots, I suppose.

Q. What do you reckon was the rate of speed at the time you went to get your supper?

A. I should suppose eight or nine knots, as near as I can guess at it.

Q. Did you see her till after she was raised?

A. Yes, sir.

Q. Where was the hole?

A. In the port bow—the worst of it.

Q. How large a hole was it?

A. Very large; the bow was all knocked out—bursted right open.

53 Cross-examined by Mr. Silliman:

Q. What was done with the engine of that boat?

A. They took it on the dock at Hoboken, and used it for different purposes; they did not put it into a boat; they took it to pieces and used it for different parts of other boats; it never was used again as an engine.

Q. Who was at supper with you?

A. The captain was there, and I think there was one or two deck hands. I did not take particular notice how many there were, but I know the captain was there, because we went out together.

Q. You say that when you heard the signal to "back strong" you came out and started for the forward deck?

A. No, I started from the cabin to the engine-room when I heard that alarm bell, the bell to back her stronger, if she could be. I did not go before, because I had a man there who—

Q. How far was it from where you were sitting to the engine-room?

A. It may have been 30 feet.

Q. You went as quick as you could?

A. Yes, sir; started very lively.

Q. You did not see the America after that?

A. No, sir.

Q. Where were you at the moment of the collision?
A. About four or five feet from the engine-room; hadn't got there quite.
Q. Pretty well knocked off your feeet?
A. Yes.
Q. Which way, ahead or back?
A. I' staggered me back pretty well, and a little to one side.
Q. When you speak of that boat's rate of speed as 8 or 9 knots, do you mean 8 or 9 knots by the land or through the water?
A. I should think, by the land. There was quite an ebb tide running.
Q. And you made then about 26 revolutions?
A. No, sir; 20.
54 Q. How fast would 20 revolutions propel that boat in dead slack water, light as she was then?
A. I should think 9 knots, may be 10. I never timed her exactly.
Q. You spoke of backing over to the slip in Brooklyn after the collision; how long were you in backing over?
A. I don't suppose I was over three or four minutes. She would back nearly as fast as she would go ahead.
Q. How long did you stop for that propeller?
A. A very short time; you might say it was a halt, and that was all. I told them they would have to go back, or she would fill there.
Q. You went alongside of a ship and got ashore by a line from her?
A. Our bow came up to the ship's bow; we was pretty near her.
Q. Were you alongside of a pier?
A. No, sir; we might have been 5 or 6 feet off from the ship's bow—our bow might.
Q. You all got ashore by that time from the ship?
A. No, sir; two of us did; I don't know how the rest got ashore.
Q. Are engineers licensed?
A. Yes, they are now.

THOMAS FITZSIMMONS, for libellants, sworn.

Examined by Mr. Beebe:

Q. How old are you?
A. 26, next January.
Q. Do you follow the water?
A. Off and on for the last seven years; part of the season on the water and part working ashore, but the biggest part on the water.
Q. Are you attached to any boat now?
A. No, sir; I am working on shore now, down at Saugerties, in Ulster County, in an ice-house.
Q. Were you on board the Fairfield at the time of this collision?
55 A. Yes, sir; as a deck-hand.
Q. How many deck-hands were there?
A. Three; two besides myself.
Q. Where were you at the time of the collision?
A. On the forward deck.
Q. Had you been in to get anything to eat?
A. I had been in to get it, but didn't get it; I hurried out.
Q. When you started to get something to eat, whereabouts was the Fairfield, with reference to the two shores?
A. I think she was in the middle of the river, a little over a quarter of a mile above the ferry-slip.
Q. Did you hear the single whistle blown from the Fairfield?
A. I think I did, as I went in the door to get my supper.

Q. What was the first thing you heard after you got into the supper-room?

A. I was just sitting down to the table when I heard one bell; I don't think I was rightly sitting down when it struck.

Q. Did you go right in and sit down?

A. Yes, sir; but the rest of the crew had to get in behind me, and that kind of bothered me a little.

Q. Did you know what that single bell was for?

A. I always understood that it meant to slow.

Q. How long had you been in the Fairfield at that time?

A. About a *month* or eight days.

Q. Had you ever been in the employ of the Camden & Amboy Company before?

A. No, sir.

Q. Have you ever been employed by them since?

A. No.

Q. What was the next thing you heard?

A. Another bell.

Q. What did you do then?

A. I was sitting near a door. I reached out my hand and opened the door and looked out; I thought there must be something wrong.

Q. Which gangway was it?

A. The starboard.

56 Q. What did you do?

A. I went up and went on the forward deck. As I was passing the engine-room I heard the jingling bell commence to ring.

Q. How far do you think the ferry-boat was from you when you started from the door?

A. I should think about 100 yards, but I would not be positive.

Q. You heard the jingle-bell ring as you started from the door?

A. No; I was about half way between the door and the engine-room.

Q. When you reached the forward deck, how far was the ferry-boat from you?

A. I should think she was about ten yards.

Q. How was she coming?

A. She was coming slightly at an angle; the Fairfield was heading toward the New York shore, and the America was slightly angling.

Q. Did you hear any whistle from the America?

A. I don't remember. I would not want to swear whether I did or not.

Q. What was the Fairfield doing at that time?

A. Backing.

Q. Did you observe whether, when the America struck you, you was going ahead, or which way you were going?

A. I think we were going astern.

Q. By the land?

A. Yes, sir.

Q. How rapidly should you think the America was coming when you saw her before she struck you?

A. I should think she was at her full speed at that time.

Q. At the time she struck you, how fast?

A. I should not think she was going at more than four or five knots an hour.

Q. Was the blow a heavy one?

A. It was middling heavy; it shook the Fairfield.

Q. Where did she strike you?

57 A. On the port bow.

Q. Did you see what effect it had on the stern?

A. As she came along, the stern kept caving right into her.

Q. As the ferry-boat came along, the stern of your vessel gradually receded from her?

A. Yes, sir.

Q. How much should you think she was angling towards the New York shore; did you form any idea?

A. I don't know as I could form any idea; not a great deal, I should think. I should not think it was any more at an angle than that, (referring to the pilot's diagram,) if it was so much.

Q. Did you see Ferguson come there on the forward deck?

A. I saw him on the forward deck.

Q. Did you hear the America hail?

A. I commenced hallooing first.

Q. What did you say?

A. I wanted to know if they was going to leave us in that way. I said "Are you going to leave us in that way?"

Q. What reply did you get?

A. Some of them told me to go to hell.

Q. Where did the sound seem to come from?

A. From the ferry-boat. I cannot say whether it came from the pilot-house or not.

Q. Did you hear any one from your boat say you were sinking?

A. Ferguson was saying we were sinking. We were blowing whistles of distress.

Q. Did she attempt to approach you at all after she backed away?

A. No, sir, she went right on to her slip.

Q. Did you see how near the New York shore you were at that time?

A. I did not pay a great deal of attention; I think we were about half way.

Q. What shore, if either, were you nearest to?

58 A. From the time it took to back into the slip, I think we were nearer to the New York shore. I heard the bells to stop, and I asked what they were stopping for; why they did not keep on. I asked some of them that were around there; then the bells commenced to ring to back again.

Q. When you got into the slip how much water had you?

A. I can't exactly state; we were sinking; I got off the main deck.

Q. What did you get on to?

A. On to a vessel there.

Q. How long afterwards was it that your boat went down?

A. At the time I got off, her bow was under the water, and her stern sunk, I think, in about two minutes afterwards.

Q. Did you see her lights?

A. Yes, sir; I seen Abraham Quick putting them up; after the boat sunk the stern lights were still above the water; I am sure the lights were up before I went to supper.

Cross-examined:

Q. When you put your head out of the door and looked, did you see the America?

A. I did not say I put my head out, I said I opened the door.

Q. You looked through the gangway?

A. Yes, sir.

Q. And you saw the America?

A. I did.

Q. Did you make any calculation or estimate at the time, as to how far she was off, or do you speak here simply from your own recollection of it this distance of time? You had no occasion at that time to make any particular estimate of it?

A. Of course not; but I think it was 100 yards.

Q. That is your present estimate at this time?

A. Yes, sir.

Q. What part of the ferry-bort did you see?

A. I can't recollect what part I saw, but it was the ferry-boat.

59 Q. I suppose you saw the bow.

A. I saw about half of her, I think.

Q. Did you see her over both your bows?

A. I saw her but slightly on the left. I sat on the very edge of the boat, where I could sit and look out. I sat on the starboard side. I was looking through the starboard gangway, and I sat away outside of the starboard gangway.

Q. Was it the America's starboard or her port side that you saw?

A. I would not say but what I saw nearly as much of one side as the other.

Q. She appeared to be coming about head on?

A. Slightly angling.

Q. Were not the two boats heading up and down the river, or pretty nearly so?

A. No, sir; I don't think so. I think we was heading nearer to the New York shore.

Q. Did you feel any jar from the collision? You spoke of the bow being crushed in.

A. At the time that I was walking around, I thought I felt a slight shock of the boat.

Q. Nothing to throw you off your feet, I suppose?

A. I was walking around all the time. I was prepared for it.

Q. Were there any people on board the ferry-boat?

A. The main deck was all crowded.

Q. Do you know which of them gave that bad answer?

A. No, I can't say who it was; I don't want to accuse any man, but some one said it.

Q. All you know about it is that you heard it from a voice in the direction of that boat?

Q. You took no particular notice at the time, of the distance between the bells?

A. I can recollect that they were very close together.

Q. You took no particular notice of it, made no minute of it at the time?

A. I did not make any minute of it, but I remember.

60 ABRAM QUICK, for libellants, sworn.

Examined by Mr. Beebe:

Q. Do you follow the water?

A. Yes, sir.

A. How old are you?

A. Past twenty.

Q. Are you a son of Captain Quick?

A. Yes, sir.

Q. How long have you followed the water?

A. Six years.

Q. What boat are you attached to now?

A. The Amboy.
Q. Were you on the Fairfield at the time of this collision?
A. Yes, sir.
Q. How long had you been attached to her?
A. Three or four years.
Q. In what capacity were you on her?
A. A deck hand.
Q. Where were you at the time of the collision?
A. On the forward deck.
Q. Had you been below at any time in the cabin?
A. Yes, sir.
Q. What did you go there for?
A. For my supper.
Q. Where was the boat when you went in to supper?
A. Right off.
Q. Had you straightened down the East River?
A. Yes, sir; we had straightened down before I went to supper.
Q. In reference to the two shores, where was your boat; in the middle?
A. She was right in the middle of the river, heading right down the river.
Q. That was the position of things when you went in to supper?
A. It was.
Q. Did you notice any vessels around at that time?
61 A. No, sir.
Q. How were your lights then?
A. All up.
Q. Did you hear a whistle from the Fairfield?
A. Yes, sir.
Q. Where were you then?
A. In the cabin.
Q. How many whistles did you hear?
A. One.
Q. What kind of a whistle was it?
A. A loud whistle.
Q. What was the next signal that you heard?
A. I heard one to slow.
Q. How long a time should you think elapsed between the whistle and the bell to slow?
A. They came right away, one after another.
Q. What was next after the bell to slow?
A. Two to back.
Q. Was there any bell to stop?
A. Yes, sir.
Q. Which came first, the bell to back or the bell to stop?
A. The bell to stop.
Q. How long a time should you think elapsed between the bell to slow and the bell to stop?
A. I think I could count two, three, or four seconds.
Q. What followed?
A. Two to back.
Q. Did you leave the cabin?
A. Yes, sir.
Q. At what time did you leave it?
A. At the time I heard the alarm bell, the jingle bell to back tronger.
Q. Where did you go then?

A. On the forward deck.
Q. Had the vessels come together then?
A. No; not until after I got on the forward deck.
Q. How far off was the America when you reached the forward deck?
A. About one length off.
62 Q. How did she seem to be coming?
A. Pretty fast.
Q. Did you hear her whistles?
A. I heard two whistles.
Q. Where were you when she whistled?
A. On the forward deck.
Q. How many whistles did she blow?
A. Two.
Q. What was the Fairfield doing at that time?
A. She was a-backing.
Q. How was she pointing at that time?
A. Towards New York.
Q. Angling on the shore?
A. Yes, towards New York.
Q. Which way was the ferry-boat pointing?
A. She pointed a little towards New York, too.
Q. Which was most angling towards New York?
A. The Fairfield.
Q. From the time that you saw her at the distance of a length off up to the time that she struck you was any change made in her course?
A. No, sir.
Q. At the time that the America actually struck you where did she strike?
A. On the port bow.
Q. How near were you standing, with reference to the place where she struck?
A. About ten or fifteen feet from it.
Q. What effect did it have?
A. It hit a pretty good blow.
Q. Did it break in the deck?
A. It broke in the bow.
Q. What effect did it have on your stern?
A. It shoved it right over towards the starboard.
Q. Did anybody hail the America?
A. Yes, sir; Tom Fitzsimmons.
Q. What hail did you hear from your boat?
A. We are sinking.
Q. Did you hear any reply?
63 A. I heard somebody say, "Go to hell." It came off the ferry-boat, but I could not tell where on the boat it came from.
Q. Did she come to your assistance?
A. No, sir.
Q. Did you blow signals of distress?
A. Yes, sir.
Q. Was it not after you came on deck that the Fairfield fell to backing until you got into the slip on the Brooklyn side?
A. Yes, sir; she stopped for a propeller on the Brooklyn shore there.
Q. How did you back?
A. Pretty strong and rapidly.
Q. How long should you think you were backing across?
A. Do you mean how long it took to back her when she did back?

Q. Yes.
A. I can't say.
Q. And when you got into the slip, how was she?
A. Her deck was under water.
Q. Did you see her after she was raised?
A. Yes, sir; in Hoboken.
Q. Whereabouts was the hole?
A. I did not see her on the dry-dock; I saw her where they put her.
Q. You could not tell, then, how large the hole was?
A. I looked over the bow when she struck.
Q. How big was the hole?
A. It was so that a team of horses could walk into her.
Q. What shore was the Fairfield nearest to?
A. The New York shore.

Cross-examined:

Q. How much nearer to the New York shore was she?
A. In the middle of the river, towards New York.
Q. You say she was nearer to the New York shore?
A. Yes, sir; but I can't tell how much.
64 Q. Was she half way between the middle of the river and the New York shore, or was she nearer to the one than the other?
A. Nearer the middle of the river; I could not judge how much nearer.
Q. A third of the way across?
A. No.
Q. You did not notice at all, I presume.
A. Yes, I noticed.
Q. Did you notice that she was nearer to New York than to Brooklyn at the time of the collision?
A. Yes, sir; towards New York.
Q. How much nearer to New York than the middle of the river? Was she half way from the middle of the river to New York?
A. I guess she was about one-third—so I should judge.
Q. What signals of distress did you make?
A. Blowing the whistle loud.
Q. One blow or two blows, or a continued blow, or what?
A. I can't judge; I did not count them.
Q. Was it one long blow, or repeated blows?
A. A long blow until we get into the slip on the Brooklyn side.
Q. Do you know what rate of speed you were going at when you came down the river?
A. About 8 knots an hour, through the water.
Q. Where were you when you heard the first bell rung?
A. In the cabin.
Q. That was the bell to slow?
A. Yes, sir.
Q. How long did you remain in the cabin?
A. Until I heard the alarm bell ring.
Q. That was after the bell to back?
A. There were two to back, and the alarm-bell right after that. That meant to back strong. After I heard that bell I came out the starboard gangway and went directly to the forward deck. The America was then, I should judge, about the length of our boat from us.
Q. You did not notice at all?
65 A. Yes, I noticed. I noticed the ferry-boat and us. I was there before the ferry-boat struck.

Q. But you had no occasion at that time to make any measurement or estimate of the distance?

A. No, I didn't pay much attention to it, but I should judge it was about the length of the steamboat.

Q. Did you stand amidships in your boat, or one side?

A. Pretty near amidships.

Q. What part of the ferry-boat did you see?

A. I seen the port side, I guess.

Q. When you struck her, or she struck you, the contact was on your port bow?

A. Yes.

Q. Was the whole of the injury on your port bow, or was the bow on both sides crushed in by the blow? Was you sound up to the cutwater on the starboard side, or not?

A. She struck us on the port bow and broke in a hole there.

Q. Was that hole at all on the starboard side?

A. The stem was pushed right over towards the starboard. The starboard bow was shoved over, too.

Q. How many feet on the starboard side of your stem was broken in?

A. I cannot say?

(Witness is shown a diagram, upon which he marks the injured parts as well as he can.)

Q. Was any part of the vessel crushed there? (Referring to the diagram.)

A. No. It was on the port side that she was crushed. There she was a little crushed on the starboard side, too.

Q. How much was it back?

A. I did not notice.

*B.* Was it five feet or 10 feet?

A. I don't know, but I know she was crushed on the port bow.

Q. But you don't know whether there was any crush on the starboard side?

66 A. There was not much crush only on the port bow.

Q. How long were you in backing across, from the time the two boats separated?

A. I can't tell how long.

Q. Can you judge whether it was three, or ten, or five minutes, or one?

A. No; I cannot tell.

Captain QUICK recalled.

Examined by Mr. Beebe:

Q. What was the name of your other deck-hand?

A. James Quick.

Q. What has become of him?

A. Can't find him.

Q. Did you have another fireman?

A. Yes; but he was not on board at that time.

Q. There was also Mrs. Patterson, your cook?

A. She is dead.

Q. Who did the Fairfield belong to?

A. The Camden & Amboy Railroad Company.

Q. They employed you and paid you?

A. Yes, sir.

Cross-examined:

Q. How do you know she belonged to them?
A. I believe they bought her, according to all ac'ounts.
Q. Have you anything to do about it?
A. Yes, sir.
Q. Have you got her registery or the bill of sale?
A. No, sir; those papers were lost.
(Libellants rest.)

*Testimony for defence.*

JOHN B. BAULSIR, sworn:

Examined by Mr. Silliman:

Q. You are a pilot on the Fulton ferry?
A. Yes, sir.
67 Q. How long have you followed the water?
A. About 19 years.
Q. Where did you begin?
A. On the North River.
Q. How long have you been connected with the ferry between here and Brooklyn?
A. About 17 years.
Q. During what portion of that time have you been a pilot?
A. About 15 years.
Q. Were you the pilot on the America at the time of this collision?
A. I was.
Q. How was the weather?
A. Clear.
Q. What was the state of the tide?
A. An ebb-tide.
Q. What time of the ebb?
A. About half-tide.
Q. Is that the strength of the tide?
A. That is the strength of the tide.
Q. How does the tide run at that part of the river; slowly or rapidly?
A. It runs rather stronger there than it does in some other portions of the river.
Q. What is about the rate of it there at half-tide; at the place where this collision occurred?
A. About four knots.
Q. You left the New York side, on a trip to Brooklyn, on that occasion?
A. Yes, sir.
Q. What number of passengers had you on board?
A. I should judge we had in the neighborhood of a thousand.
Q. Had you many teams on board?
A. Yes, sir.
Q. When you came out from the New York side, what course did you take?
A. Came out towards Brooklyn; headed the boat up the stream, against the tide.
68 Q. For what purpose?
A. We had to go against the tide to get to the Brooklyn slip.
Q. Where were you at the time the Fairfield came in a position that made it necessary for you to have reference to her?
A. I was on the Brooklyn shore, between Fulton Ferry pier and the De Forest dock.

Q. How far do you think you were from the Brooklyn shore at that time?

A. About 150 yards.

Q. Nearer the Brooklyn shore than to the New York shore?

A. Yes, sir.

Y. At that point where was the Fairfield?

A. Heading towards the Brooklyn shore.

Q. How far above you up the river was she?

A. I should suppose she was 350 yards.

Q. Was she off any particular point on the Brooklyn shore that you can name?

A. I should judge that she was off Marston and Powers' dock, the coal-dock above the ferry.

Q. How was she heading at that time, relative to your heading?

A. She was heading about southeast by south. We was heading northeast by north.

Q. Was there any place where she was in the habit of going?

A. Yes, sir; she was in the habit of going into the lower ferry-dock. She left barges there, and would come there and pick up empty ones.

Q. What do you mean by the lower ferry-dock?

A. The lower pier at the foot of Fulton street.

Q. Where would a line drawn over her stern and passing over her bow touch?

A. About Market street, New York.

Q. Where on the Brooklyn shore?

A. About the end of the lower dock at Fulton Ferry.

69 By Mr. Beebe:

Q. Angling in that direction?

A. Yes, sir.

Q. Nearly square across?

A. Not square across.

Q. Well, a broad angle?

A. Yes, sir.

By Mr. Silliman:

Q. As you were heading, on which of your bows was he?

A. On the starboard bow.

Q. Nearly up the river was your heading?

A. About northeast by north.

Q. Had the Fairfield continued her course and you continued your course, how would you both have gone?

A. The Fairfield would have went in towards the Brooklyn shore, and would have cleared me by at least 20 yards.

Q. Was there anything apparent to prevent his continuing his course on that line?

A. No, sir; not as I seen.

By Mr. Donohue:

Q. You give your course as northeast by north and hers as southeast by south?

A. Yes, sir.

Adjourned.

70 U. S. district court, southern district of New York.

Before Hon. Judge Blatchford, May 19th, 1869.

THE CAMDEN & AMBOY RAILROAD CO.
*vs.*
THE STEAMBOAT AMERICA, HER TACKLE, ETC.

Direct examination of John V. Baulsir continued by Mr. Sillima*m*:

Q. Where was the Fairfield when you first saw her?

A. She was above Marston & Powers' dock. I first saw her from Market street. I came out of the lower slip.

Q. (By the Court.) When she first attracted your attention, where was she?

A. The first I saw her she was one-third of the way of the river from the Brooklyn shore.

By Mr. Silliman:

Q. About how far from the shore was she when you first saw her?

A. She was about off there. (Marking it on the map.) That may be higher up than she was, because this Marston & Powers' dock is a big dock, and it shows very small here.

Q. Do you think she was there when you first saw her?

A. She might have been lower down. The direction of the boat, as I have said, when she was coming, was coming apparently with her stern pointing towards the lower ferry-slip.

Q. About where was she in the river when you first saw her?

A. She was about one-third of the width of the river from Marston & Powers' dock.

71 Q. How was she then heading?

A. She was heading towards this lower dock of the Fulton ferry.

Q. Describe your course when you came out of the Fulton ferry until the time of the collision.

A. This is the Fulton ferry. I came out about off this direction, headed up about like that. (Marking it on the map.) The point of the collision was just a little below the lower ferry-dock. The collision, as near as I could judge, was about 150 yards from the end of the dock.

Q. (By the Court.) The end of the dock on the lower side of the two docks?

A. Yes, sir.

By Mr. Silliman:

Q. Why did you take that course that you have described?

A. On the ebb-tide, coming out, we strike that tide, and it takes at least two-thirds of the river to turn our boats on the strength of the ebb-tide.

Q. Before you ran head up?

A. Yes, sir.

Q. Could you begin to head up before you passed the middle of the river?

A. You commenced to swing up gradually.

Q. Could you have headed up before you passed the middle of the river?

A. No, sir; I don't think we could.

Q. You have not stated, I believe, the distance apart of the two ves-

sels at the time you speak of, when she was off Marston & Powers' dock.

A. I think we were about 350 yards apart.

Q. Were you running on parallel lines, or on lines diverging, or how?

A. This boat was heading down towards the lower dock, and I was rather outside of her, and would have went under her stern.

Q. Heading a little towards the New York shore of her course?

A. Yes, sir.

72 Q. (By the Court.) At what time?

A. When I first saw her.

Q. Whereabouts do you put your boat when you first saw her?

A. After we had turned, coming up on the Brooklyn shore, I was about off what is known as Deforest's dock, the first pier below the ferry.

Q. You say at that time you were heading so that if she had kept on her course and you on yours she would have passed to your starboard?

A. Yes, sir; she would have went on the starboard side of the America.

By Mr. Silliman:

Q. Did you hear any signal from her, and when?

A. I heard one whistle from her.

Q. How far apart were you when you heard that one whistle?

A. I suppose we were about 250 yards apart.

Q. Did the Fairfield hold her course or change her course, or what was done with that?

A. I think she was sheering to the right at the time she whistled.

Q. Towards the New York shore?

A. Yes, sir.

Q. What did you do?

A. I answered his signal.

Q. How?

A. By one distinct whistle.

Q. What did you do with your wheel—anything?

A. Yes, sir; I hove my wheel to port.

Q. Slightly, or much, or how?

A. Hove it hard aport.

Q. Did you do anything with your engine?

A. Yes, sir; I rang to off.

Q. Anything else?

A. And rang to stop, and two bells to back.

Q. Do you do this at long intervals, or rapidly, or how?

73 A. Between the shut-off and the stop bell there was an interval of seven or eight seconds; the two back-bells were in quick succession.

Q. Did you at any time blow two whistles?

A. No, sir.

Q. Was it possible for you to have turned more to the right than you did?

A. No more than I did do.

Q. Can you judge whether, if you had not put your helm as you say you did, but put it in the opposite direction, could the vessel have been cleared after she sheered?

A. No, sir; I put the helm hard aport.

Q. After you starboarded, she could not have been cleared?

A. No, sir.

Q. Had you not ported your helm, would the vessels have gone clear, or would they have come in collision?

A. I think they would have come in collision.
Q. Where would he have hit you or you him?
A. He would have hit me on the starboard side of my boat.
Q. Which was the weakest part of your vessel—the side or the bow?
A. The side.
Q. If he had not sheered to the right and given you that signal, but each of you had kept on your course, what would have been the passage of the two vessels?
A. We would have cleared by at least 20 or 25 yards or 30 yards.
Q. Was there any apparent necessity for his sheering to the right, and giving you the signal to go to the right?
A. I don't think there was; there was nothing in shore to prevent him from going down on his regular shore.
Q. That is, between you and the Brooklyn shore?
A. Yes, sir.
Q. Was the sheering of the Fairfield to the right before, or at the time, or after the whistle he gave?
A. I think she was sheering at the time he blowed the whistle.
74 Q. Do you remember what time of tide it was?
A. Ebb-tide.
Q. What time of the ebb?
A. About half-ebb.
Q. Was there any other course that you could have taken by which you could have cleared her after he gave that sheer and made that signal?
A. No, sir.
Q. What was the condition of your wheels at the time of the collision, what were they doing—your engine?
A. Backing.
Q. Had you had any turns; and how many back, do you judge?
A. We had about three or four turns back.
Q. Were there any people on the deck of the Fairfield visible to you?
A. I didn't see a soul on the deck of the Fairfield.
Q. (By the Court.) When you were in contact?
A. I saw no one on the Fairfield until after the collision.
Q. (By Mr. Silliman.) I don't know whether you have stated how far from the end of the pier it was that this collision took place.
A. About 150 yards.
Q. (By the Court.) From the end of what pier?
A. Fulton-ferry dock; the lower dock; a very little below the end of the dock.
Q. Did you hear any call or hail to you from the deck of the vessel?
A. No, sir.
Q. Was your ferry-boat lighted; had you your lights up?
A. Yes, sir.
Q. What is the height of your deck above the water?
A. I think it is about six feet.
Q. Had the deck of the Fairfield any bulwarks around it in front?
A. Nothing but a small button-piece right on the bow.
Q. It had no deck around it?
A. No, sir.
7 Q. You could see the whole deck before you?
A. Yes, sir.
Q. Did you hear any call from your vessel to the Fairfield to go to hell, or words to that effect?
A. No, sir; I heard nothing of the kind.
Q. You heard nothing of the kind yourself?

A. No, sir.

Q. Did you receive any call or intimation of assistance being required or necessary?

A. I heard no call from no hand on the Fairfield.

Q. What was your rate of speed at the time that you were crossing that river, up to the time that you began to slow in consequence of this vessel?

A. We might have been going about five miles an hour.

Q. Why don't you make a straight line when you leave your slip right across to Fulton slip?

A. We cannot do it. That tide prevents that.

Q. After you turn and head up, then, that is your course?

A. Our regular course generally, heading square up the river, is east, northeast, or a little to the north or east-northeast. We go up and turn then again to the east to get into the slip.

Q. Do you have to get a little above the slip to get in?

A. We go right about abreast of that slip before we get in on the ebb-tide.

Q. How was your speed at the time of the collision?

A. Our speed was about stopped by the land.

Q. You stated that you had something like a thousand passengers on board?

A. Yes, sir.

Q. Were they distributed equally all over the vessel?

A. Most of them were on the bow.

Q. They always are so?

A. Yes, sir.

Q. Would that depression on the bow render your stopping quicker than if she was lighter on the bow when you stopped and backed on the ebb-tide.

A. It would naturally cause her to stop quicker.

76 Q. If the Fairfield, after the collision, with five feet of *of* water in her hold, had backed square across the river from a point off Dover street, one-third nearer the shore in the middle of the river, with the ebb-tide, where would she have fetched up?

A. I think she would have fetched up away below Wall-street ferry, on the Brooklyn side.

Q. If the Fairfield was off Market street, in the centre of the river, and heading straight down the centre of the river at the time you came out of Fulton Ferry, where would the two vessels have passed?

A. She would have passed us in the centre of the river, and we would have been on the Brooklyn shore.

Q. Would that have been true if the Fairfield was going at the rate of 8 or 8½ knots through the water?

A. Yes, sir; I think it would.

Q. And you going at the rate of speed that you stated?

A. Yes, sir.

Q. Can you form a judgment as to how long it was between the time that the Fairfield sheered and blew her whistle until the time of actual collision?

A. From the time she sheered and blew her whistle until the time of the collision, it was not over 40 seconds.

Cross-examined by Mr. Donohue:

Q. When you went out that night, was the America going, when you left your slip, at the usual speed?

A. About as fast as she generally goes with a heavy load of passengers.
Q. With the same load she had on?
A. Yes, sir; about as usual.
Q. And she went up to the time you slowed at her usual rate?
A. About the usual rate.
Q. And you swear that that usual rate, with that load of passengers, when she gets under good headway, is not more than five miles an hour?
A. Isnot over that.
Q. By the land?
77 A. By the land, against tide.
Q. Then, with the tide running about four miles an hour there, the water was passing up at the rate of nine miles?
A. That would have made it about nine, I think.
Q. You have stated the slip you started from was the lower slip on the New York side.
A. Yes, sir.
Q. What slip were you bound to on the other side?
A. For the lower slip on the Brooklyn side.
Q. That is right at the upper side of the lower dock, as you call it?
A. Yes, sir.
Q. There is not gap or anything between it and that lower dock?
A. Yes, sir.
Q. That lower dock is rather a narrow one?
A. Not unusually narrow.
Q. It is by no means a wide one?
A. I don't know that it is a very wide dock.
Q. When you started from the slip on the New York side, how was your wheel?
A. My wheel was shove' hard astarboard.
Q. How long did you hold your wheel hard astarboard?
A. Until the boat headed up the river.
Q. Headed how, by compass?
A. I should judge she headed about east, or a little to the northward of east—about two points to the northward of east.
Q. You were then, you say, by the line of Deforest's dock?
A. Yes, sir.
Q. And how far from it?
A. Well, I should judge we were about 150 yards from the end of the dock.
Q. What is two points to the north of east?
A. It is two points to the north of east.
Q. Can't you tell me what that is?
A. It is down in the compass, I believe.
78 Q. Can you tell me what two points north of east is?
A. I believe that is a correct answer for the question.
Q. You cannot tell me what that point is?
A. I don't know that I can.
Q. Can you tell me what one point north of east is?
A. Generally it is about one point to the north of east or east-northeast.
Q. What is one point to the north of east?
A. It is one point north of east.
Q. Can you give me no other statement?
A. No, sir.

Q. You cannot tell me what two points north of east is more than that it is two points north of east?

A. Yes, sir.

Q. How many points had you got nearer the east when you got headed up?

A. About two.

Q. And you can't tell what to call that, more than two points north of east?

A. We were not using any compass at the time. You are figuring now on the compass as if I was using it and steering by it altogether. I never was to sea in my life. I followed the river, and that is about all. We use a compass in foggy weather, and that is about all.

Q. There is a compass in your pilot-house?

A. Yes, sir.

Q. When you got 150 yards from De Forest's dock you headed up the river, and that was two points north of east?

A. Yes, sir; about that.

Q. Then what did you do with your helm?

A. I kept the boat steady right along on that course.

Q. Kept it on that course?

A. Yes, sir.

Q. Didn't let her go any more to the starboard?

A. I don't know that she did; don't think she did.

Q. Was that when you saw the Fairfield?

A. I think it was about that point I saw the Fairfield coming down.

79 Q. Had you steadied her before you saw the Fairfield?

A. Yes, sir.

Q. When you get a vessel on a swing that way, with your helm hard astarboard, you let the wheel run?

A. Yes, sir.

Q. Don't you have to meet her a little by putting it a little to port?

A. Yes, sir, to steady her.

Q. You had let the wheel run, and had ported it a little to steady it?

A. Yes, sir.

Q. Had you the wheel ported when you saw her to steady her?

A. I don't recollect whether I had or not.

Q. But somewhere about that time, whether just before or after you saw her?

A. I saw the boat as she was coming down, after I turned and got the boat headed up the river.

Q. Had you ported your helm to steady her before or after you saw her?

A. I think it was before I saw her.

Q. Do you recollect distinctly?

A. Well, I think it was before I saw her.

Q. You think it was, but are you distinct?

A. Pretty sure I did.

Q. Did you make any change of your wheel from that time until the time that you heard her whistle?

A. Yes, sir; I guess I did; very often we have to shift the wheel a little to keep the boat on her course.

Q. I am asking you about this trip. After that time when you so saw her, and before the whistle, what change of the wheel did you make?

A. I don't know that I made any.

Q. You don't know whether you made any?

A. No, sir; it was a very short time.
Q. Do you recollect whether you did or not?
A. No, sir.
Q. You went along, and you think at that time, when you so first saw her, she was how far from Marston & Powers' yard, out in the river?
80 A. I don't know exactly what distance she was in the river; she might have been one-third of the way across.
Q. Right out from Marston & Powers to the New York side?
A. Yes, sir.
Q. Then you think she was about 350 yards from you?
A. Just about, I think.
Q. Then you think you got about one hundred yards nearer before the whistle was blown?
A. Yes, sir.

By the court:

Q. What do you mean by that?
A. The two boats were then within 250 yards of each other.
Q. Do you mean when the Fairfield whistled?
A. Yes, sir.

By Mr. Donohue:

Q. At that time, where was the Fairfield?
A. She was rather closer down towards the slip.
Q. Had she got to either of your slips at that time?
A. She had got about to the upper slip. We have three slips on the Brooklyn side, and she had got about to our extra slip.
Q. Off the pier that forms the upper part of it?
A. About the upper part of it, I think.
Q. Could you then form any idea how far she was off the end of that pier?
A. I could not, exactly.
Q. Was she still nearly one-third of the way across?
A. No, sir; nearer.
Q. Was she one-quarter of the way across?
A. She might have been. That is hard to tell.
Q. It is very difficult to fix the distance on the water?
A. Well, it is.
Q. You first saw the vessel yourself; no one called your attention to her?
81 A. No one called my attention to her; I saw her.

Redirect:

Q. Were you using your compass on that trip?
A. No, sir.
Q. To go to the lower or the upper slip on the Brooklyn side, do you enter between the same two piers, on what you call the "A?"
A. Yes, sir.
Q. And you call one the upper and the lower slip?
A. Yes, sir.
Q. And that is between the two piers forming your ferry-slip?
A. Yes, sir.
Q. And in entering, to go into either slip, you go between the same two piers?
A. Yes, sir.

Q. So that whether you are going into the upper or the lower slip, in either case you make the same entrance, generally into your slip in front?
A. Yes, sir.
Q. Don't you, on such a trip, with the ebb-tide against you, have occasion, more or less, at all times, to move your wheel one way or the other, slightly, in steadying your boat?
(Objected to. Objection sustained. Exception.)

ROBERT CORNELL WHITE, sworn on behalf of respondents.

Examined by Mr. Silliman:

Q. Do you reside in Brooklyn?
A. Yes, sir, I do.
Q. How long have you resided there?
A. About fifteen years.
Q. Have you been in the habit during that time of crossing the Fulton ferry frequently?
82 A. Daily, more than once a day, on an average.
Q. Your business?
A. I am a steamboat-owner; I run steamboats.
Q. How long have you been engaged in that business?
A. More or less ever since I was 17 years old.
Q. Are you familiar with steamboats and their use and management?
A. I am.
Q. Were you on board of the America at the time of the collision with the Fairfield?
A. I was.
Q. Where were you on board of her?
A. I was leaning against the forward flag-staff or the *the* stanchion that is next to it, on the starboard side of the boat.
Q. Where is that?
A. It is about 30 feet from the extreme bow of the boat, just forward of the extension from the cabin-entrance.
Q. The hood, as it is called?
A. Yes, sir.
Q. Were you against the railing?
A. No, I was not.
Q. How near the railing did you stand?
A. About 10 or 12 feet, I should judge. I was right next the carriage-way.

By Mr. Beebe:

Q. Is that in the centre?
A. That is on each side.
Q. Where the flag-staff is?
A. That is not in the centre.

By Mr. Silliman:

Q. From the point where you stood, could you see beyond you in front?
A. I could, distinctly.
Q. Did you see the Fairfield?
A. I did.
83 Q. When was your attention first attracted to her, and by what?
A. I think I saw her before I saw any signals at all; I saw her coming down the river.

Q. In what direction did you see her—on your starboard side or your port side?

A. She was on our port side coming down.

Q. In what way was she heading?

A. I could not tell the point of the compass.

Q. Towards what point?

A. She was heading towards the Brooklyn shore.

Q. Do you remember at about what point of the Brooklyn shore she was heading?

A. She seemed to have come from the New York side, from up towards the section of the dry-dock, I should judge, if she came in a direct line.

Q. Where do you judge she would have gone if she had continued her course?

A. She seemed to be along down the docks, and rather approaching the Brooklyn shore than otherwise.

Q. Along which docks?

A. Along the Brooklyn docks.

Q. Look at this map. About where were you when you saw her?

A. I remember distinctly the occurrence. We were nearly two-thirds of the way across when I first saw her. She was coming down in this direction, right across, so.

Q. She was coming in that direction of what?

A. I think she was about on the line of the Brooklyn shore here, but being further out in the river, this way, she was nearing all the time the dock here. She was about on a line with the Brooklyn dock.

Q. Would a line in the way she was coming have come near the De Forest dock?

A. I don't think she would have come into the dock.

Q. Would she have about cleared the Fulton ferry, or what?

A. I should judge she was about clearing the Brooklyn dock, but her course here was widening from the Brooklyn shore.

84 Q. She was converging the Brooklyn shore?

A. Yes, sir.

Q. (By the Court.) She was about on a parallel line with the Brooklyn shore, below the ferry?

A. Yes, sir; below the ferry, but not above.

By Mr. Silliman:

Q. She was then above the ferry?

A. Yes, sir.

Q. About what distance from the shore, below the end of the pier?

A. So that she would come in close by the pier. When I first saw her she was off in that position, I should judge.

Q. Mark on this map where you think she was when you first saw her?

A. About there. (Marking it.)

By Mr. Beebe. Where was Fulton ferry when you first saw her?

A. About there. (Marking it.) That was the point within a very few feet.

By Mr. Silliman:

Q. Was the Fairfield heading inside of that point?

A. Oh, yes; she was coming down this way.

Q. What, in your judgment, would have been the distance they would have passed if each had continued their course, or would have collided?

A. I think the ferry-boat would have had to slow a little if they kept on. They may have possibly escaped without it.

By the Court:

Q. You think if the boats kept on their course without slowing there would not be any collision?

I think it would be very close work.

You think the ferry boat would have to slow?

A. Yes, sir.

85 By Mr. Silliman:

Q. If the other had continued without slowing?

A. Yes, sir.

Q. How far should you judge the Fairfield was from the shore here, where you have marked it, when you first saw her?

A. I should think she was about three or four lengths from the shore when I first saw her, possibly five, if she was not a very long boat.

Q. What signal did you hear from the Fairfield?

A. I cannot remember distinctly. My impression is there was but one whistle blown from the Fairfield. That was the impression left on my mind.

Q. Did you hear any signal from the America?

A. It is rather confused; I cannot remember sufficiently well. I can state generally. I have a distinct recollection of what my judgment was at the time.

Q. What was your judgment at the time?

A. My judgment was that the Fairfield was in the wrong.

Q. How far from the shore was the point of collision?

A. About two or three lengths of the ferry-boat from the end of this pier.

Q. You say it was about two or three of the ferry-boat's length from the end of the lower slip?

A. From the end of the dock forming the lower side of the lower slip.

By the Court:

Q. From the end of the dock at the lower side of the slip?

A. Yes, sir.

Q. (By Mr. Silliman:) Mark as near as you can judge where this collision was?

A. About there, I should judge. (Marking it.)

By the Court:

Q. Did you notice her course from that point to the point of collision?

86 A. Yes, sir.

Q. That is it?

A. That is as near as I can make it.

Q. Now, your course?

A. We were heading right into this dock here, and just as she got her way turned up a little that way and brought the bows right together.

Q. So that you struck her on the port bow?

A. It was a pretty even strike; there was not much port about it, or starboard; they came together very near end and end, in a straight line.

Q. Did you hear any call from the Fairfield to the America?

A. I did.

Q. What was it?

A. I cannot remember what it was; it was after the collision took place; the Fairfield's whistle was blowing and some one calling.

Q. Did you hear any reply from the pilot?

A. I did not.

Q. Or from any one else on board the boat?

A. There were several calling out, I should judge, from both boats, but I could not distinguish. I don't remember what was said, or who it was said by.

Q. You don't know whether it was said by passengers or by anybody else?

A. No, I could not say.

Cross-examined by Mr. Donohue:

Q. The forward deck of the ferry-boat was pretty full of by passengers around you?

A. It was when we were crossing before the collision.

Q. Up to the time of the impending collision?

A. Nearly up to the time. The passengers ran back. I had to stand on the little projection.

Q. The division between the carriage-way and the passage-way you were standing at?

A. Yes, sir; looking up at pier 37, to see, if I could, one of my own boats, which I expected to arrive about that time.

87 Q. How dark was it?

A. It was after sundown, but I don't think it was dark.

Q. How far could you see?

A. All the way across the river.

Q. All the way up, too, could you not?

A. I think so; I could see our own pier across the river.

Q. And you could have seen your vessel if she had been coming down?

A. Yes, sir.

Q. Up to the time of the rush the passengers were all around you?

A. Yes, sir.

Q. Have you any distinct recollection whether the whistle first called you, or you saw the Fairfield before it?

A. I saw her before the whistle.

Q. How much before?

A. No, it was not long before. It may not have been more than one-half a minute.

Q. Was it your judgment when you first saw them that one would have to slow for the other?

A. Yes, sir; I thought the ferry-boat would have to slow.

Q. How far were the two vessels then apart?

A. They must have been 8 or 10 lengths apart.

Q. Of the ferry-boat?

A. They are about the same length; there was not much difference.

Q. About where in the Brooklyn shore was the Fairfield off when you first saw her?

A. See was a little above Marston & Powers' coal-yard.

Q. The one right above the ferry?

A. Yes, sir.

Q. You mean the coal-dock above the ferry?

A. I mean the coal-yard. Not where the ferry company is, but above it.

Q. You say you have been a steamboat-owner?

A. Yes, sir.

88 Q. You never have been a steamboat-master?

A. Yes, sir.

Q. When?
A. Various times I have taken command of my own vessels.
Q. Practically working them, or in the papers only?
A. Not only in the papers, but practically working them.
Q. Any other business besides steamboating?
A. I have been a merchant.
Q. In the crockery business?
A. Yes, sir.
Q. How long *long* were you in that?
A. About 20 years.
Q. Are you in it now?
A. No, sir.
Q. How long have you been out of it?
A. About 4 years.
Q. Have you been acting as master since that?
A. I command my own boats, no matter who is on board of them.
Q. You order your captains and they obey you?
A. Yes, sir, I do.

JOHN V. BALSIR, recalled.

Examined by Mr. Silliman:

Q. If you had not ported your helm at the time you did, and stopped as you did, what would been the point of collision?
A. The Fairfield would have struck the America in the side.
Q. At the rate at which she was coming at the time of the collision, what would have been the effect on the America?
(Objected to.)
A. I think she would have crushed the America's side in.
89 Q. Had you not put your helm to port, as you have stated you did, where do you say would been the point of collision?
A. The Fairfield would have struck the America in the side.
Q. Which side?
A. She would have struck her on the starboard side?
Q. She would have struck the starboard side of the America?
A. Yes, sir.
Q. At the rate at which she was coming, what would have been the effect upon the America?
A. I think she would have crushed the hull in.
Q. Would the Fairfield have gone under the guards of the America?
A. Yes, sir.
Q. No part of her bow so high but she would have gone under her guard?
A. No, sir.
Q. As soon as you saw the Fairfield sheer what did you do?
(Objected to.)
Q. What time did you port your helm?
A. The time I rang the first bell I commenced to port it, the time I rang the bell to shut off I commenced to keep the helm aport.
Q. How soon after her sheer was that.
A. It was not two seconds.

WILLIAM WOOLSEY, sworn on behalf of respondent.

Examined by Mr. Silliman:

Q. You are an engineer?
A. Yes, sir.

Q. How long have you been an engineer?
A. About 16 years.
Q. Where are you employed?
90 A. I am on the Fulton ferry at present.
A. How long have you been an engineer on that ferry?
A. About 12 or 13 years.
Q. Were you engineer on board the America at the time of this collision with the Fairfield?
A. I was.
Q. Did you receive any signals from the pilot with reference to your engine at that time?
A. I received a signal to slow, in a few seconds another to stop, and two back bells in quick succession.
Q. Did the engine obey?
A. Yes, sir.
Q. Did you make those changes?
A. Yes, sir.
Q. Did the engine work quickly or otherwise?
A. She worked quick.
Q. Had you any turns back before the collision?
A. I had between 3 and 4 turns back before she struck.
Q. You were below deck, I suppose.
A. Below deck.
Q. Were you above deck at any time before the collision?
A. No, sir.
Q. You know nothing of the other circumstances of the case?
A. Nothing at all.
Q. That is all you saw?
A. Yes, sir.

Cross-examined by Mr. Donohue:

Q. How many turns did you make altogether back at that time?
A. Well, I might have made five or six—not over that, I don't think.
Q. Before the signal to go ahead?
A. Yes, sir.
Q. Did you get the signal to stop backing and go ahead right after each other?
A. No, sir, I think not.
91 Q. How near together?
A. There might have been half a minute.
Q. Do you mean that from recollection, or mere guess, half a minute?
A. Well, from recollection.
Q. You think it was half a minute between the two?
A. It might possibly have been less.
Q. And then you went ahead until you went into your slip?
A. Yes, sir.
Q. Did you feel the collision?
A. Yes, sir, I felt it slightly.
Q. How slight was it—just perceptible?
A. You could feel she struck something, but what it was I could not tell.
Q. Was it just perceptible that there had been something striking, or was it very forcible?
A. We struck something, not very forcible.
Q. Which way was it—whether it was very slight or not?
A. To the best of my recollection it was slight.
Q. The blow to you felt slight?

A. Yes, sir.
Q. Was it what you heard, or was it a shock, that you concluded from, that it was a collision?
A. It was the same as if you would strike against the rail.
Q. Was it a noise?
A. No, sir; no noise.
Q. You didn't hear any noise of the collision?
A. No, sir.
Q. It was some jar to the boat?
A. Yes, sir.
Q. A very slight one?
A. Yes, sir; it appeared to be but a slight jar down-stairs.
Q. When you get the order to slow, how long does it take you to do that?
A. A second or two.
92 Q. How long was it from the time you got her slowed until you got the order to stop—how many seconds?
A. I suppose 7 or 8 seconds.
Q. Running against the tide in that way, to stop her wheels from going around, how long does it take?
A. I think you can check her——
Q. I mean to stop the wheels steady?
A. Not over five seconds, I should not suppose.
Q. Have you any recollection whether they did not stop, or whether they did turn with the tide that night?
A. I recollect they stopped.
Q. Right away?
A. Yes, sir.
Q. So that the force of the tide, she being going against an ebb-tide, was not enough to carry her around?
A. Not to counteract her speed.
Q. There was nothing in the tide to counteract those wheels?
A. No, sir.
Q. Do you find that that does sometimes?
A. No, sir.
Q. When you get them steady, how long does it take you to get them actually turning ahead again?
A. You can put them back immediately, as soon as she stops.
Q. One second or two seconds?
A. Two or three seconds.
Q. At what rate will you make your revolutions when you are under the ordinary full headway—at what rate will you make your turns against the tide?
A. About twenty-five.
Q. You will start off to turn against the tide at the rate of twenty-five turns a minute?
A. Not immediately on the start.
Q. If you have the tide against you, how long will it take you to make the first turn?
A. I suppose the first turn would take about five seconds.
Q. You don't think more?
A. I don't think more.
93 Q. How long will the second take you?
A. I cannot tell.
Q. Can you tell in what time the second can be made, or the third?
A. No, sir.

Redirect.

Q. Can you state how many turns back, going against the ebb-tide you were going on, would stop your boat?

A. About four.

Q. About four would stop her?

A. About four would stop her.

Q. Do you mean by that by the land or in the water?

A. By the land.

Q. How many would give her backward way?

A. A single turn would give her backward motion, if she was stopped by the land.

Recross.

Q. Your business is below?

A. Yes, sir.

Q. When you speak of four turns stopping her, you mean still water?

A. When she is going against the tide.

Q. How many turns will stop her when she is going with the tide?

A. That I have never tried.

Q. Have you ever tried it going against the tide?

A. I have.

Q. When?

A. Four or five years ago.

Q. With what boat?

A. With the America.

Q. When?

A. In the East River, long before the collision.

Q. Where were you when you made the trial?

A. In the engine-room.

Q. And that is below?

A. Yes, sir.

94 Q. Can you tell me how many turns, in still water, when she is going at full speed, it will take to stop her?

A. I cannot.

Q. You stop her coming to the bridge. Do you mean to say you can do it with less than six?

A. Yes, sir.

Q. How many can you do it with?

A. Coming in on the first back bells, I can do it with the America with four or four and a half.

Q. Coming into the slip, and having first slowed and stopped in the ordinary way, it takes you four to stop her before she gets to the bridge, does it?

A. I take the same bells with the others.

Q. Are the bells given very quick coming into the slip?

A. Not very quick.

Q. Some little distance elapses?

A. At times.

Q. The pilot takes care to slow down a little coming into the slip?

A. Yes, sir.

Q. And then he takes care to stop a little?

A. Yes, sir.

Y. After all that is done coming into the slip, don't it take five or six revolutions to prevent her edging and sagging below to the dock?

A. No, sir.

Q. You say it don't take more than four?

A. Not more than four.

Q. Have you tried it?
A. I pay very little attention coming into the slip. I cannot say I ever have, coming into the slip.

EDWARD MOUNT, sworn on behalf of libellant.

Examined by Mr. Silliman:

Q. What is your business?
A. I am deck-hand on the ferry.
95 Q. What ferry?
A. Fulton.
Q. How long have you been so?
A. I have been deck-hand about four years.
Q. Were you a deck-hand on board the America at the time of the collision with the Fairfield?
A. Yes, sir.
Q. Who was pilot?
A. Bergen.
Q. Who was deck-hand?
A. Joseph Hanson and myself.
Q. Who was engineer?
A. William Woolsey?
Q. Those were all the hands of the boat?
A. They were the whole crew.
Q. A fireman?
A. Yes, sir.
Q. Who is he?
A. Alexander Pearsall.
Q. Where was Pearsall at the time?
A. He was down below.
Q. Where were you at the time that these vessels approached one another?
A. I was just inside of the chains.
Q. Which end of the boat?
A. On the bow.
Q. You were forward then?
A. Yes, sir.
Q. Acting as lookout?
(Objected to.)
Q. What was your business there?
A. Lookout.
Q. How far from the Brooklyn shore did this collision occur?
A. I should think it was about 150 yards.
Q. Did you notice the Fairfield before the collision?
A. Yes, sir.
Q. How was she heading relatively to your boat from the shore?
96 A. She was heading from Pike or Rutger's street to the lower side of Fulton ferry dock.
Q. How far should you judge she was from the Brooklyn shore when you thus noticed her?
A. When I first noticed her, I suppose she was 200 or 250 yards from it.
Q. Had she continued on the course she was then moving on, and you continued on the course you were moving, how would the vessels have passed one another?
A. She would have passed about 20 yards on the starboard side.
Q. Did she continue on that course, or did she change it?

A. She changed her course.
Q. In what direction?
A. Toward New York.
Q. What did your boat do?
A. She kept pretty near on her course. She changed a little to the Brooklyn shore.
Q. Did you hear any whistle from the Fairfield?
A. I did; one.
Q. Was any response made by your boat?
A. Yes, sir; it was answered.
Q. With what?
A. One whistle.
Q. Did your boat do anything that you observed in regard to her engine?
A. That I could not say.
Q. Don't you know whether you slowed, or stopped and backed?
A. I heard the bell rung to slow.
Q. Did you hear any other bells?
A. I heard two in quick succession after.
Q. What was that for?
A. To back.
Q. After the Fairfield sheered, could your boat have cleared her by any course that you saw?
A. No, sir; not after she sheered, you could not.
Q. Not after which sheered?
A. Not after the Fairfield sheered.

97 Q. Suppose you had gone to port, towards New York, what would have been the consequence?
A. She would have struck us in the side.
Q. Where did the Fairfield go after the collision?
A. She backed her engine, and went in about De Forest's dock, somewhere in the slip there.
Q. (By Mr. Donahue.) Did you see her?
A. Yes, sir.

By Mr. Silliman:

Q. Do you know how the tide was?
A. Strong ebb-tide.
Q. How soon after the whistle from the Fairfield was the whistle given by your boat?
A. Very shortly.
Q. Did the vessels come together end on, or how?
A. They came very near head on.
Q. Did you hear any other whistle from your boat than the one that was given in reply?
A. No, sir.
Q. Were any two whistles given from your boat?
A. No, sir; not that I heard.
Q. Were there any persons on the deck of the Fairfield?
A. I seen no one until after the collision, except the man in the pilot-house.
Q. Were you standing where you could see the deck of the Fairfield?
A. Yes, sir.
Q. Did you hear any cry of "Go to hell" from your vessel?
A. No, sir; I did not.
Q. Or any other call from your boat?
A. I heard some of the passengers holloa something.

Q. How many passenger' should you judge there were on the ferry-boat?

A. I should judge there were 900 or 1,000.

Q. That is the hour of the day when you are most thronged?

A. Yes, sir.

98 Q. Do you remember what time it was that day?

A. It was somewhere near five o'clock, or a quarter to five; it was not far from five o'clock.

Q. How long a time, in your judgment was it, between the time that the Fairfield first sheered and the collision?

A. I don't think it was a minute.

Q. Do you know the length of the ferry-boat?

A. No, sir; I do not.

Cross-examined by Mr. Donohue:

Q. Who do you say was the other deck-hand?

A. Joseph Hanson.

Q. Where was he?

A. Standing forward, with his hand on the chain.

Q. With you?

A. Yes, sir.

Q. When the boat left her slip on this side, where were you?

A. We were both on the other end.

Q. Both on the after end?

A. Yes, sir.

Q. When she left you hooked up the chains?

A. Yes, sir.

Q. And then walked towards the other end?

A. Yes, sir.

Q. It was crowded with passengers, was it not?

A. Yes, sir.

Q. What first called your attention to the Fairfield?

A. I seen her before there was any attention called.

Q. Did you mention the circumstance to anybody that you saw her?

A. No, sir.

Q. You didn't call any one's attennion to the fact that you saw her?

A. No, sir.

Q. You had no duty to call any one's attention to it?

A. No, sir.

Q. How far out had you got before you got on the forward part of the hood—had you got turned?

99 A. Yes, sir; she had got turned when I had got forward.

Q. About opposite where were you when you got forward; about opposite De Forest's dock?

A. Somewhere about opposite it, or a little below.

Q. Which of your slips were you heading for when you got forward?

A. I was heading pretty near straight up the river.

Q. Where would you have hit if you had kept right on the oourse you were in, do you suppose?

A. We would have hit somewhere above the dry-dock.

Q. On the New York side?

A. Yes, sir.

Q. By dry-dock you mean Market street, or somewhere along there?

A. Yes, sir.

Q. Can you tell about how long after you saw her the whistle came from her?

A. Well, no; I could not tell exactly how long it was.

Q. How far off was she from you when you first saw her?
A. I suppose she was 350 yards.
Q. Which bow did you see her off—which side of your boat, starboard or port, or do you recollect?
A. I don't recollect; I think she was off our starboard side.
Q. Where did you stand?
A. I stood forward.
Q. About what part forward?
A. Just inside the chains.
Q. The forward chain, or the second chain?
A. The forward chain, just outside of the forward chain.
Q. A good many people standing around you?
A. Yes, sir.
Q. A good many people standing outside of you?
A. Yes, sir.
Q. That is where the crowd was?
A. The crowd was all over at that time.
100 Q. It was crowded there as well as anywhere else?
A. Yes, sir.
Q. Are they not more crowded in that part of the boat?
A. Yes, sir; always crowded forward.
Q. How far off from the Brooklyn shore was she when you first saw her?
A. About 250 yards off.
Q. And about off Marston & Power's?
A. Yes, sir; she was a little above Marston & Power's.
Q. About 250 yards off the shore?
A. Yes, sir.
Q. And 350 yards off you?
A. Yes, sir, as near as I could tell.
Q. And you were about 150 yards off the Brooklyn shore.
A. Yes, sir; at the time of the collision.

Redirect:

Q. Did I understand you to say that you didn't go forward until the boat was heading up the river?
A. I didn't go forward until she was heading up the river.
Q. What detained you?
A. Getting though the crowd.

Recross:

Q. What was the other deck-hand's name?
A. Joseph Hanson.
Q. You and he went forward together?
A. He went forward ahead of me.
Q. How far ahead of you?
A. I could not say.
Q. In sight of you?
A. No, sir; I didn't see him until I got forward.
Q. Where did you see him?
A. When he was standing at the chain forward.
Q. The same one you were at?
101 A. He was standing right at the king-post of the two chains where they connect together.
Q. The inside chain or the outer chain?
A. The forward chain.

JOSEPH HANSON sworn on behalf of respondent:

Examined by Mr. Silliman:

Q. What is your business?
A. Deck-hand.
Q. How long have you been deck-hand?
A. Eighteen years, perhaps a little over.
Q. Were you a deck-hand on board of the America at the time of the occurrence with the Fairfield?
A. Yes, sir.
Q. Where were you standing at the time of the collision?
A. Right by the chain.
Q. By what chain?
A. The chain in front.
Q. With your hand holding it?
A. Yes, sir.
Q. By your hand holding it, do you mean you hold where the hook on?
A. Yes, sir.
Q. What do you hold the chain in that way for?
A. To keep the passengers from throwing them down.
Q. So that you were in the very bow of the boat?
A. Yes, sir.
Q. King-post is the name of the upright post you were at?
A. Yes, sir; king-post.
Q. Did you see the Fairfield?
A. Yes, sir.
Q. When did you go to the front of the boat?
A. As quick as the boat started from New York. I went as quick as I could get through.
Q. You were out there how soon?
A. Two or three minutes.
102 Q. Were you out of the slip before you got to the bow?
A. Yes, sir.
Q. How far out of the slip were you?
A. Just out of the slip.
Q. Just as you cleared the slip?
A. Yes, sir.
Q. Did you see the Fairfield before the collision?
A. Yes, sir.
Q. How was she heading then?
A. She was coming right down the Brooklyn shore, and then she sheered off.
Q. Sheered which way?
A. For New York.
Q. What did your boat do then?
A. Our boat stopped and backed.
Q. Did you hear any whistle from the Fairfield?
A. No, sir; not until she sheered. Then he blowed his whistle.
Q. Was it before or after he sheered, or at the same time?
A. I think it was after he sheered.
Q. If he had not sheered on the course that he was then going, and the course you were then going, how would the boats have passed?
A. He would have cleared us. The Fairfield would have cleared us, if had kept his course clear.
Q. Would he have gone between you and the Brooklyn shore, or where?

A. Yes, sir; between the Brooklyn shore.
Q. Did you hear any cry from the Fairfield?
A. No, sir, I did not.
Q. Did you hear any rough language from your boat to the Fairfield, such as "Go to hell?"
A. No, sir; I did not.
Q. Nothing of the kind?
A. No, sir.

Cross-examined by Mr. Donohue:

Q. Your business there is to keep passengers from throwing down that chain?
103 A. Yes, sir; so that they should not throw it down.
Q. There were passengers outside of the chain, were there not? Perhaps there were; they generally do go outside.
Q. Your best recollection that there were?
A. Yes, sir.
A. Did you see the Fairfield first, or did you have your attention called to her by something else?
A. No, sir; no one called my attention to her.
Q. You first saw her without your attention being called to her?
A. Yes, sir.
Q. Where was she then?
A. Coming down a little above Thompson's coal-yard.
Q. How far is that above Marston & Power's coal-yard?
A. That is where I mean.
Q. Coming down by Marston & Power's coal-yard when you saw her?
A. Yes, sir.
Q. How far was she off from you then?
A. I should think 300 yards, or 350.
Q. How far was she from the Brooklyn shore?
A. I don't suppose she was over just a little ways.
R. How far?
A. I cannot tell how far.
Q. You cannot form any judgment?
A. May be one-third from the Brooklyn shore.
Q. One-third away from the Brooklyn shore towards New York?
A. Yes, sir.
Q. Where was your vessel at that time?
A. She was in the river.
Q. How far from the Brooklyn dock?
A. About 250 yards or thereabouts.
Q. Had she headed up yet?
A. Yes, sir; she was heading up the river.
Q. Was she heading straight up along the Brooklyn docks, or was she angling a little towards New York, swinging out?
104 A. She was making her course for the Brooklyn shore.
Q. Was she not swinging out a little from the Brooklyn shore at that time, to make her course?
A. I cannot say that.
Q. You cannot say whether it is so or not?
A. No, sir; I don't think she was.

Redirect.

Q. Who were the lookout of the America at the time?
A. Me and Mount.
Q. One of the lookouts generally takes charge of these chains?

A. Yes, sir.
Q. And at the same time observes other vessels?
(Objected to as leading.)
Q. What was your duty as lookout?
A. To see if there is any vessel in the road.
Q. There might have been passengers outside of the chains, as there generally are. Were you in a position where you could see perfectly, notwithstanding those passengers?
A. Oh, yes, sir; for I was standing right at the chain. There were no passengers ahead of me.
Q. They were off on the side of you?
A. Off on the other side of me.
Q. How many length of your boat should you judge the Fairfield was from Marston & Power's dock when you first saw her?
A. She was about 300 yards, or 350.
Q. From Marston & Power's?
A. Yes, sir.
Q. How many lengths of your boat?
A. I suppose about three lengths.

Recross.

Q. You say the other one was 350 yards from Marston & Pow-
105 er's dock, and you were 350 yards from there. How many lengths of your boat were you from the Brooklyn shore?
A. I cannot say.
Q. How many lengths were you off the dock?
A. We were about two lengths off the dock.
Q. You saw the Fairfield you said?
A. Yes, sir.
Q. Did you report her to any one?
A. No, sir; not particularly, I didn't.
Q. Did you report her to any one?
A. No, sir.
Q. Did you consider it your duty to report her to any one?
A. No, sir; I did not.
Q. You saw her, and supposed all the rest saw her?
A. Yes, sir.
*C.* But you didn't consider you had any duty to report her?
A. I don't know.
Q. Did you report her?
A. No, sir.
Q. Did you neglect any duty in not reporting her?
A. I don't know as I did. I reported her to the passengers.
Q. Was there a change in the course of your boat, as far as you saw, from the time you first saw the Fairfield up to the collision?
A. No; I don't think there was, sir.

STEPHEN CROWELL, sworn on behalf of respondent.

Examined by Mr. Silliman:

Q. You reside in Brooklyn?
A. Yes, sir.
Q. What is your business?
A. I am president of the Phœnix Insurance Company.
Q. A company in Brooklyn or in New York?
106 A. The Home Company is in Brooklyn? We have an office in New York also.

Q. How long have you resided in Brooklyn?
A. About 40 years.
Q. Have you been in the habit of crossing the ferries there?
A. Yes, sir.
Q. How frequently?
A. Every day for this last 20 years; I think, twice a day.
Q. Do you remember the occasion of the collision between the America and the Fairfield?
A. Yes, sir.
R. Were you a passenger on board the America at that time?
A. Yes, sir.
Q. Where were you standing.
A. On the forward part of the boat, outside of the forward chain.
Q. Did you observe the Fairfield at any time, and when?
A. I saw the Fairfield coming down the river on the 'rooklyn side.
Q. How far ahead of you was she, apparently, when you first saw her?
A. I am not familiar with distances. I think she was two or three hundred yards from us.
Q. (Handing map to witness.) Look at this map. About where was the Fairfield when you first saw her?
A. She was somewhere in this neighborhood, just above the ferry. I cannot tell exactly, but she was somewhere in this neighborhood, opposite Marston & Power's.
Q. You cannot tell exactly?
A. No, sir; I don't suppose any one could.
Q. About how far, in your judgment, was she then from Marston & Power's dock—how far out in the river?
A. I should think she was about 200 yards. She was out considerable ways, more or less.
Q. About 200 yards, more or less?
A. Yes, sir.
107 Q. Do you recollect about where you were, relatively, from the Fulton ferry when you first saw her?
A. I think we were about here, in that neighborhood, when I first saw her. (Marking it on diagram.)
Q. About how many yards should you say you were from De Forest's dock, on the Brooklyn shore, any time when you saw her?
A. We were two-thirds across from New York.
Q. As she was then heading, and as you were heading, if both vessels had continued their courses, how would they have passed?
A. I have no doubt, if she had kept on her course, we would have gone right by her.
Q. She would have gone between you and where?
A. Between us and Brooklyn.
Q. Did you observe, and state where you were when you observed it, if you did, any change in her course?
A. I was standing on the front and saw her suddenly change her course.
Q. Which way?
A. Towards New York.
Q. Was there any signal from her after that, or before it, or the same time?
A. I think a whistle was blown; I could not say whether it was one or two.
Q. Of which boat?
A. The Fairfield.

Q. Did you observe what was done by your boat when she sheered?
A. Our boat sheered also.
Q. Which way?
A. Up the river.
Q. Did you sheer to the right, or the left?
A. Sheered to the left.
Q. Did you sheer to Brooklyn, or New York?
A. There was a slight sheer towards the New York shore.
Q. After the Fairfield sheered?
108 A. Yes, sir. I thought when I saw her sheer that she would strike us on the side—strike our wheel, but the boat sheered and she struck us on the bow.
Q. You thought which would have struck you on the side?
A. The Fairfield.

By the Court:

Q. Struck your wheel where?
A. On the left side.
Q. She turned more to the left, and brought her bow against you?
A. Yes, sir,

By Mr. Silliman:

Q. You say the Fairfield coming down was sheering towards New York?
A. Yes, sir.
Q. That is from you?
A. Yes, sir.
Q. How could she hit your side?
A. She didn't sheer fast enough. The America was heading across the river, and as the Fairfield sheered, my impression was that she would strike us right in the side, and instead of that, she struck us in the bow.
Q. Struck you on the New York side of your boat?
A. I don't know, sir, coming across the river.
Q. It struck you on that side, instead of this?
A. Yes, sir.
Q. What did your boat do when this occurred, before they struck—what was done?
A. The boat sheered a little, and struck her on the bow instead of one side.
Q. Your boat sheered?
A. Yes, sir.
Q. Your boat sheered to New York?
A. When the Fairfield turned this way towards New York, I saw there would be a collision without any doubt, and I supposed she would strike us in the side, and instead of that the America came bow on.
109 Q. You caught it on your bow instead of your side?
A. Yes, sir.
Q. Whereabouts was the point of collision? Was it off Marston & Power's, or Fulton ferry, or De Forest's, or where?
A. About off the lower ferry pier. (Marking it.)
Q. How far from the lower ferry pier should you think it was?
A. I should think she was 200 yards off her, and it must have been 50 yards nearer the river—250 yards from the pier as she sheered. That is where the collision took place.
Q. (By the Court.) She was 50 yards further out by sheering?

A. Yes, sir.

Cross-examined by Mr. Beebe:

Q. Locate the Fairfield at the time you saw that sheer.
A. About here. (Marking it.)
Q. Locate your boat at the time you saw that sheer.
A. I think somewhere in this neighborhood here. (Marking it.)
Q. Up to the time that your boat took that sheer her course had been across the river, towards the ferry-slip, as you observed it?
A. Yes, sir; there was not much variation.
Q. Which came first, the sheer, or the whistle from the Fairfield?
A. I cannot say.
Q. Did you hear any answering signal from the ferry-boat?
A. No, sir; I don't think I did; I didn't observe it.
Q. They didn't strike your ear?
A. No, sir.
Q. You suppose, on that sheer, if she had kept her course as you were crossing, she would have struck you on the port side?
A. Yes, sir; on the left-hand side.
110 Q. And that, by the sheer, brought it on your stern?
A. Yes, sir.
Q. Are you a stockholder in that company.
A. I am not. The insurance company of which I am president had some stock in it.

Redirect:

Q. In stating these distances and points, do you mean that you state them accurately?
A. I may vary 50 yards.
Q. Here is the boat, and here is the end you were 'tanding on, and the Fairfield coming down. Do you means to say, as they were, you thought she would have hit you on this side or on this side?
A. I thought she would have hit us on this side. Our boat was not heading up the river.
Q. You thought she would have hit you on the port side?
A. Yes, sir.

LUTHER SMITH sworn on behalf of respondent.

Examined by Mr. Silliman:

Q. Your business is what?
A. Superintending pilot of the Union Ferry Company.
Q. How long have you been connected with the ferry?
A. Some 17 years.
Q. How many years have you been a pilot?
A. Eight or nine. I was a pilot 8 or 9 years before I became superintendent of pilots.
Q. Were you a pilot on the Fulton ferry?
A. Yes, sir; all the time except some 6 or 7 months.
Q. What is the rate of the tide off the Fulton-ferry pier, Brooklyn, at half-ebb, 200 yards off?
A. I should judge in the neighborhood of four knots, on the strength of the ebb-tide.
Q. What is the strength of the tide at half-tide?
A. Half-ebb in a certain portion of the river. It would probably be a little stronger an hour previous to that.
111 Q. (By Mr. Donohue.) What is it then?

A. Probably three and one-half.

By Mr. Silliman:

Q. Do you know the America?
A. Yes, sir.
Q. Familiar with her?
A. I am.
Q. How many minutes, on that state of the tide, would it take her to cross from the New York side with a load of a thousand passengers?
A. From 7 to 8 minutes.
Q. What is the distance across there?
A. 760 yards, I think, as laid on the map.
Q. (By Mr. Beebe.) Do you mean from ferry to ferry?
A. I am taking the map for it, from ferry to ferry.

By Mr. Silliman:

Q. At what rate of speed do those boats generally go—the America for instance?
(Objected to; objection sustained.)
Q. What is the capacity of the America for speed—how fast does she run?
A. Any particular time?
Q. How fast can she possibly go, in still water, under the most favorable circumstances?
A. Nine or ten knots—ten probably.
Q. Are they run as rapidly as that?
(Objected to.)
Q. At what rate do you habitually run on that ferry across there?
(Objected to; objection sustained.)
Q. Is there a uniform rate at which they run on that ferry?
(Objected to; objection sustained.)

112 Q. Do you know what is the speed of the America going across the river with the ebb-tide at half-tide?
(Objected to; objection sustained.)
Q. You stated what the capacity is in still water. What is her capacity for speed in going across the tide, with a load of 1,000 passengers?
A. Near the same.
Q. Do you know her length.
A. I think it is 164 feet on deck.
Q. Did you measure the boat Fairfield?
A. I did.
Q. In going across the ebb-tide, with water five feet deep in the hold, from the middle of the river, or a point nearer New York than the middle of the river, opposite Peck slip, going stern foremost, where would the tide have taken the Fairfield?
(Objected to; taken subject to objection.)
A. I should think somewhere in the neighborhood of Wall-street ferry, Brooklyn side.

Cross-examined by Mr. Donohue:

Q. You assume in that answer that when she starts she points her stern directly towards Brooklyn?
A. I am thinking right angles with the tide.
Q. That her stern is pointing directly towards Brooklyn; is that it, or is it not?
A. Yes, sir, that is it.

Q. Do you know the ferry-boat Peconic?
A. Yes, sir.
Q. Which is the fastest, her or the America?
A. I don't know that there is much difference.
Q. Don't you know that the Peconic's speed will take her from the foot of James street to the foot of Hunter's Point, four miles, against the tide, in half an hour?
A. I don't know that she has ever been there to try it.
Q. You are superintendent of pilots, and don't know that the Peconic has ever been on that ferry?
113 A. I don't know that she has. I don't think she ever has. We lent them boats at different times; but I don't think we ever lent them the Peconic.
Q. What boat had they last year?
A. I think the Montague.
Q. They didn't have the Peconic last year?
A. I don't think they did; they might have.
Q. Which is the fastest boat, the Montague or the America?
A. There is not much difference. I think the America is full as fast.
Q. Don't you know the Montague will make the passage against the tide in less than half an hour, those four miles?
A. I know she don't.
Q. Have you been on board of her?
A. I have.
Q. Were you on board of the boat they had last fall?
A. I don't know which one they had last fall. I think the Roslyn was the one they had last fall.
Q. What is the Roslyn's speed, compared with the America's?
Q. There is not much difference.
Q. Won't she make the passage from the foot of James street to Hunter's Point, a distance of four miles, against the tide, in less than half an hour?
A. I never tried it with her.

LUTHER SMITH recalled:

Examined by Mr. Silliman:

Q. In coming out of the Fulton ferry, in a tide such as has been described in this case, can the America be headed up before she has passed the middle of the river on this side, or where?
A. It takes her about two-thirds of the river, on the strength of the ebb-tide, before she can be headed up the river.
114 Q. Then, from the time you turn her head up, what is the necessary course to get her into the slip on the Fulton ferry?
(Objected to.)
Q. Put a vessel on this ebb-tide, two-thirds of the way across to Brooklyn, what is the proper course of navigation to get her into the slip on the Brooklyn side?
A. The course would be about northeast, about parallel with the Brooklyn shore.
Q. What did you do?
A. Run up a certain distance with the helm hard aport, to sheer into the slip. It depends on how far down the river you are.
Q. What distance?
A. From where you get headed up the river until you get opposite the ferry-slip.

Cross-examined by Mr. Donohue:

Q. The following regulations in regard to whistles you govern yourself by?

A. Yes, sir.

Q. And the ordinary rules of navigation?

A. Yes, sir.

Q. Not that you govern yourself by the rules, but a single whistle means go to port?

A. Yes, sir.

Q. And two whistles to go to the right?

A. Not two whistles to the right.

Q. Two whistles you go to the other boat's right; one whistle to her left and your own right?

A. Yes, sir.

Q. And two whistles to your own left and her right?

A. Yes, sir; meeting head and head both vessels are supposed to go to the right of each other, and two whistles to the left.

115 By the Court:

Q. One whistle means each to go to the right?

A. Yes, sir.

Q. And two whistles means to go to the left?

A. Yes, sir.

(Testimony closed.)

At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Saturday, the twenty-third day of October, in the year of our Lord one thousand eight hundred and sixty-nine:

Present, the honorable Samuel Blatchford, district judge.

THE CAMDEN & AMBOY RAILROAD & TRANSportation Company
*vs.*
THE STEAM FERRY-BOAT AMERICA, HER tackle, etc. } 20429.

This case having been heard on the pleadings and proofs, and argued and submitted on briefs and points by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court that the libel filed in this action be, and the same is hereby, dismissed, with costs to be taxed against the libellant.

116 And it is further ordered, that unless an appeal be taken from this decree within the time limited and prescribed by the rules and practice of this court, the stipulators for libellants' costs pay into court the amount of their stipulation, and the clerk to distribute the proceeds in satisfaction of the taxed costs.

SAMUEL BLATCHFORD.

117 U. S. district court.

THE CAMDEN & AMBOY RAILROAD AND Transportation Company
*agst.*
THE STEAM FERRY-BOAT AMERICA, HER tackle, &c.

GENT'N: Please to take notice that the libellants hereby appeal from

the decree in the above-entitled action, dismissing the libel herein with costs, and every part thereof, to the next circuit court of the United States for the southern district of New York.

Dated Oct. 30th, 1869.

Yours, &c.,

BEEBE, DEAN & DONOHUE,
*Liblts.' Proctor.*

(Endorsed:) 20429. U. S. district court. The Camden & Amboy Railroad and Transportation Company vs. The Steam Ferry-
118 Boat America, her tackle, &c. Notice of appeal. Beebe, Dean & Donohue, liblts.' proctor. To Geo. F. Betts, esq., clerk. Filed Oct. 30, 1869.

119 *Bonds for costs on appeal.*

Circuit court of the United States of America for the southern district of New York, in the second circuit.

THE CAMDEN & AMBOY RAILROAD AND TRANSportation Company, libellants, & appellants,
*vs.*
THE STEAM FERRY-BOAT AMERICA, HER tackle, &c., The Union Ferry Company of Brookyln, clts. & appellees.

Know all men by these presents, that we, The Camden & Amboy Railroad & Transportation Company, Welcome R. Beebe and Charles Donohue are held and firmly bound unto the above named The Union Ferry Company of Brooklyn, in the sum of two hundred & fifty dollars, to be paid to the said Union Ferry Company, for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the eleventh day of January, in the year of our Lord one thousand eight hundred and seventy.

Whereas, the above named libelt's & appellants have prosecuted their appeal to the circuit court of the United States for the southern district of New York, in the second circuit, to reverse the decree rendered in the above entitled suit, by the judge of the district court of the United States, for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above named Camden & Amboy R. R. & Trans. Co. shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

The Camden & Amboy Railroad & Transportation Company,
By W. R. BEEBE, *Atty.* [L. S.]
W. R. BEEBE. [L. S.]
C. DONOHUE. [L. S.]

Sealed and delivered, and taken and acknowledged, this 11 day of January, 1870, before me.

A. W. HALL,
*Notary Public, N. Y. Co.*

120 UNITED STATES OF AMERICA,
*Southern District of New York, ss:*

Welcome R. Beebe & Charles Donohue, being severally duly sworn, depose and say that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

W. R. BEEBE.
C. DONOHUE.

Sworn to this 11th day of January, A. D. 1870, before me.
A. W. HALL,
*Notary Public N. Y. Co.*

I approve of the within bond dated January 11th, 1870.
B. D. SILLIMAN.

(Indorsed:) Vol. 20, page 429. U. S. circuit court. The C. & A. R. R. and Trans. Comp'y, libellant & applts., vs. The Steam Ferry-Boat America, her tackle, &c., clts. & appellees. Bond for costs on appeal. Beebe, Donohue & Cooke, proctors for applts. Filed this 11th day of January, 1870.

121 To the honorable the circuit court of the United States for the southern district of New York, in the second circuit:

The petition of the appeal of Camden and Amboy Railroad and Transportation Company, respectfully shows to this honorable court—

That, on the 10th day January, 1867, your petitioners duly filed their libel in the district court of the United States for the southern district of New York, against the Steam Ferry-Boat America, her engines, tackle, &c., praying therein, among other things, that said vessel might be condemned and sold to pay certain damages sustained by your petitioners through a collision of said ferry-boat with the steamboat Fairfield, a vessel belonging to your appellants, with interest and costs, and that the amount of said damages so prayed for was in excess of fifty dollars.

That thereafter the Union Ferry Company of Brooklyn, duly appeared and claimed said vessel, and duly executed a bond for the delivery thereof to them, and filed their answer in said cause.

That said cause came on to be heard before the honorable
122 Samuel Blatchford, district judge, on the fifteenth day of October, 1869, and, after hearing the pleadings and proof of the respective parties, and after argument thereon, it was ordered, adjudged, and decreed by said court that said libel be dismissed with costs.

That your appellants are advised and insist that said decree is erroneous, and should be reversed in that said libel should not have been dismissed, but the decree in said court should have been in favor of your appellants, and for the damages prayed for in said libel with interest and costs.

Wherefore your appellants pray that said cause may be heard anew by this honorable court upon the pleadings and proofs exhibited in the district court, and upon such further proofs and allegations as may be made before this honorable court, and that the record and proceedings of said district court may be returned to this court, and that this honorable court would be pleased to reverse said decree, to pronounce in favor of appellants, and for such other and further relief in the premises as shall to law and justice appertain.

123 And your appellants will ever pray &c.

BEBEE, DONOHUE & COOKE,
*Proctors for Liblts. & Applts.*

(Endorsed:) 20,429. U. S. circuit court. The C. & A. R. R. & T. Co. agst. The Steam Ferry-Boat America, her tackle, &c. Petition of appeal, Beebe, Donohue & Cooke, proctors for applts.

Due and timely service of a copy of the within is hereby admitted. Dated Jan'y 11th, 1870.

B. D. SILLIMAN.

Filed January 11th, 1870.

124 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms in the city of New York, on Wednesday, the 22d day of May, in the year of our Lord one thousand eight hundred and seventy-two:

Present, the honorable Lewis B. Woodruff, circuit judge.

THE CAMDEN AND AMBOY RAILROAD & TRANSportation Company
*vs.*
THE STEAM FERRY-BOAT AMERICA, &C. } In admiralty.

The above-entitled cause coming on for argument on appeal,
Mr. Charles Donohue is heard in behalf of the libellant and appellant.

125 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms in the city of New York, on Thursday, the 23d day of May, in the year of our Lord one thousand eight hundred and seventy-two.

Present, the honorable Lewis B. Woodruff, circuit judge.

THE CAMDEN & AMBOY RAILROAD & TRANSportation Company
*vs.*
THE STEAM FERRY-BOAT AMERICA, &C. } In admiralty.

The above-entitled cause being still on hearing,
Mr. Charles Donohue continues his argument in behalf of the libellant & appellant.
Mr. B. D. Silliman is heard in behalf of the claimant.
Mr. C. Donohue is heard in reply.
C. A. V.

126 Circuit court of the United States for the southern district of New York.

THE CAMDEN & AMBOY RAILROAD AND TRANSportation Company, libellants & appellants
*vs.*
THE STEAM FERRY-BOAT AMERICA, HER tackle, &c., The Union Ferry Company, of Brooklyn, claimants & respondents.

WOODRUFF, J.:

It cannot be denied that it was unsafe and improper on the part of the captain, engineer, and hands employed on the vessel of the libellants, the steamboat Fairfield, to leave her in sole charge of the pilot and assist-

ant to the engineer at the time they went to their supper. She had been at the Wallabout, on the southerly or Brooklyn side of the East River, had left her tow, and had come thence out into the river and swung around, taking her course down the river, to go around the Battery to her slip on the North River. It was about 5 o'clock in the evening, on the 13th of December, 1866. The sun had set, and it was nearly dark, though the shores and objects at a considerable dis-
127 tance were still visible. The Fairfield was about to pass through a channel crossed by numerous ferry-boats, and ordinarily travelled by other craft, rendering it especially important that more than ordinary watchfulness and competent skill in navigation should be in constant exercise. That in these circumstances no lookout should be stationed, and the captain should relinquish all attention to the navigation of the vessel, and, with all hands other than the two above-named, go to the cabin for supper, was extraordinary, and, as I think, inexcusable. Nevertheless, if this inattention on their part in nowise contributed to the collision, if, in fact, the pilot saw all that was material, which he could have seen, or of which he could have been informed, had a proper lookout been stationed, and others had been on duty, then the question ceases to be affected by the want of a lookout, &c., and becomes simply a question of proper navigation, in view of what the pilot saw and knew of the presence and course of the ferry-boat with which the collision occurred.

The ferry-boat The America came from her slip at the foot of Fulton street, on the New York side, bound upwards and across the river to her Brooklyn slip. The tide was ebb and running very stron'ly down the river, and in order to make her passage with facility it was
128 necessary for her to swing around to port, on a starboard helm, head up the river, against the tide, go above her Brooklyn slip, and then port her helm and swing into her slip. According to the testimony of the witnesses she made a course by this means, well described by the letter S, in which she would travel at first across, and more than half across the river, swinging upwards, and then inclining towards the New York side, preparatory to her last manœuvre of swinging into her Brooklyn slip.

The pilot of the steamboat The Fairfield saw her from the moment she came out of the slip, and watched her movements continuously to the moment of collision. If he had had the assistance of one or many on the lookout, he could not have been sooner apprised of her approach, and he conducted the navigation of the Fairfield with all the information they could have given him and with the ferry-boat in full view. The responsibility of this navigation was upon him. He controlled the movement of the Fairfield, while the man in charge of the engine promptly obeyed his instructions, and slowed, stopped, and backed at his signal. I cannot, therefore, discover that the absence of the lookout contributed in any degree to deprive him of information, or that his management of the Fairfield was in any manner affected by the absence of the
129 others, master or crew, at their supper, until the danger of collision was imminent.

The question on the part of the libellants is, therefore, whether the Fairfield was, in fact, skilfully and properly navigated, with the ferry-boat in full view, and, on the other hand, whether there was fault in the navigation of the ferry-boat. To determine this, it is important to ascertain the location of the two vessels at the time when it became the duty of one or both to take measures to insure safety.

The testimony of the pilot of the Fairfield, corroborated by the testi-

mony of the master and crew as to her course and location, both when they went to and when they returned from the cabin, is distinct and unqualified that she was coming down nearly in the middle of the river. This is also her probable course, when her destination is considered, she being bound around the Battery to reach her slip. She, coming from the Wallabout, and taking her course down the river, would be under a temptation to incline towards the New York shore, and the witnesses on her part all state that such was her inclination. Some of them clearly exaggerate that inclination, but on the fact they are all agreed. This is denied by the witnesses from the ferry-boat. They say that the
130 Fairfield was, when they saw her, on a course tending towards the Brooklyn shore, and some of them represented her as coming from the foot of Market street, on the New York side, obliquely across the river towards Brooklyn, near the very slip to which the ferry-boat was bound in itself; not only in conflict with the witnesses from the Fairfield, but a most improbable story, and yet easily accounted for without imputing intentional misstatement to any one. In the first place, the witnesses on the Fairfield know, better than the others could know, her destination and her course. Next, in the obscurity of the evening twilight, observation from the ferry-boat is far less reliable than it would be if made in open day. Again, the witnesses from the ferry-boat did not see the Fairfield until the former had passed out into the river and swung around, so as to be headed up the river, still under a starboard helm, or at about the time her helm was steadied on her course upward. In the making of this movement, to all eyes on the ferry-boat the Fairfield would seem to be on a reverse course, and especially at that time, and in so imperfect a light, the Fairfield would seem to be moving from them in the opposite direction. Very great precision is rarely found in the statements of witnesses on either side in cases of this description, and the
131 imperfect light may have made the estimates of the witnesses from the Fairfield in some degree inaccurate, but their statements are not overcome by the observations from the ferry-boat, under circumstances so clearly adapted to deceive the observers, and when the admitted movements of the ferry-boat would easily produce the impression to which they testify, and yet be in perfect harmony with the fact as stated by the libellants' witnesses. It is also true that the testimony as to the distance of the place of collision from the Brooklyn shore is in conflict, and yet a small allowance, due to the prejudice of the witnesses attached to either vessel, and, as to passengers, due to their observation, in which the motion of the ferry-boat was imputed to the Fairfield, leading them to the belief that the latter was moving in the direction of Brooklyn, removes this conflict from any great embarrassment. That the Fairfield was slowed, stopped, and backed on the instant that the danger of collision rendered that proper, is very clearly proved.

A main fact, which a just view of all the testimony seems to me to establish, furnishes to my mind the test of the responsibility for the collision; and this fact is not only supported by the witnesses for the libellants, as I have above stated, but is corroborated, not, per-
132 haps by the claimant's witnesses to their observation on the course of the Fairfield, but by their testimony to the course of their own boat. The fact is this: At the time when the two vessels gained such a position that precautions to pass each other in safety were proper, they were approaching each other so nearly end on that the rule that each should keep to the right of the other applied to them.

Whatever be the rule respecting the duty of ferry-boats to keep a

lookout from the forward-deck, one thing is certain, that in the navigation across this crowded channel a most vigilant lookout from some place on the boat is required, and I can hardly conceive of any navigation in which, in view of the interests of life and property and the dangers of inadvertence, it is more imperatively demanded. It is also clear, upon the proofs here, that the two men who are claimed to have acted as lookouts on the bow of the ferry-boat were wholly useless as such. They might as well have been in the cabin. They saw the Fairfield, it is true, before the collision, but made no report of her approach. Whether they even saw her before she was seen by the pilot, who was engaged in directing the boat out of her slip and into the river and bringing her around to her course up the river, is at least doubtful; and if they did, they gave no notice.

133 It is also apparent that the pilot himself did not see the Fairfield until he had accomplished all the manœuvres last stated, and was near to the Fairfield, nor until she had obeyed the rule which in the judgment of her pilot required him to pass to the right, or port to port, of the two vessels.

The pilot of the ferry-boat was attentive to the endeavor to stem the strong ebb tide, and reach a point up the river at which he should make his final sheer into his slip, and he failed to discover the Fairfield and learn her actual course and movement so soon as it was the duty of either himself or some one who should inform him. He heard the one whistle of the Fairfield, but he was not at liberty to await that whistle when the boats were approaching, as I think they were, so that each should keep to the right. This is easily accounted for. It was of importance to the ferry-boat that she should be kept up the river far enough, against the strong ebb-tide, to enable her to swing readily around so as not to strike below her slip. He was under a strong motive not to turn too soon to accomplish an entrance to his slip. Either because he did not see the Fairfield and learn her true course soon enough, or because he mistakenly persisted too long in keeping the ferry-boat up against the tide, he did not port his helm so soon as

134 he ought. He did not do so till after the Fairfield had turned to the right, nor until, after that, she warned him, by her whistle, that she was acting in conformity with the rule which he also was bound to observe without such warning.

I cannot resist the conclusion that the collision was due to the want of proper and seasonable observation on board the ferry-boat, to imperfect and mistaken observation when made in the dim twilight; to mistake, in imputing to the Fairfield an apparent motion due to the actual movement of the ferry-boat; to an over anxiety to gain a distance up the river against the tide to enable the ferry-boat easily to enter her slip; and finally, to a neglect, from whatever cause, to turn to the right, as it was the duty of the ferry-boat to do to avoid collision.

These conclusions necessarily require that the libellants have a decree to recover their damages and costs, and a reference to compute such damages must be ordered. (3 Benedict, 424.)

Charles Donohue, for the Libellants.
Benjamin D. Silliman, for the Claimants.

135 (Endorsed:) The Camden & Amboy Railroad & Transp'n Co. vs. The Steam Ferry Boat America, &c. Decision. Filed September 23, 1872.

136 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on the twenty-third day of September, in the year of our Lord one thousand eight hundred and seventy-two:

Present, the honorable Lewis B. Woodruff, circuit judge.

THE CAMDEN AND AMBOY RAILROAD & TRANSportation Company, libellant & appellant,
*vs.*
THE STEAM FERRY-BOAT AMERICA, HER tackle, &c., The Union Ferry Company, claimant & appellee.

This cause having been heard on appeal on the pleadings and proofs and argued by Mr. Donohue for the appellant and Mr. Silliman for the appellee, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed that the decree of the district court herein, rendered on the 23d day of October, 1869, be, and the same is hereby, reversed, with costs of the district and circuit courts to the libellant & appellant to be taxed.

And it is further ordered that the appellant recover the damages sustained by it by reason of the collision mentioned in the pleadings, and that the said ferry-boat be condemned therefor.

And it is further ordered, that it be referred to Kenneth G. White, one of the commissioners of this court to ascertain the damages sustained by the appellant by reason of the said collision, and report the same, with the evidence of this court, with all convenient speed.

Enter this order nunc pro tunc as of Sept. 23d, 1872.

137 (Signed) L. B. WOODRUFF, *Circuit J.*

(Endorsed:) U. S. C. C., S. D. N. Y. The Camden and Amboy Railroad & Transportation Company vs. St. Ferry-Boat America, &c. Decree. Filed March 27, 1874.

138 U. S. circuit court.

THE CAMDEN & AMBOY RAILROAD & TRANSportation Company
*vs.*
THE STEAM FERRY-BOAT AMERICA.

Reference under decree, dated October 17th, 1872. Present, W. R. Beebe, esq., for libellant, & B. D. Silliman, esq., for respondent.

WILLIAM BROWN sworn on part of libellant.

Am foreman machinist for Camden & Amboy Transportation Co.; been in their employ 7½ years. My business is to superintend all the work in connection with the steamboats belonging to the co. The co. own 19 steamboats. The co. do all their own repairing and building. Knew the steamboat Fairfield. Knew her at time she was sunk by this collision. She belonged to the co. The co. had owned her for
139 15 years, I think. She was in very good order at time of collision. Extensive repairs had been put upon her during the season. The boiler was overhauled thoroughly; two new paddle-wheel shafts put in; the cylinder l ored out; new piston and rod put in, and new brasses

in parts of the machinery. The hull also had a general overhauling. She was taken out on the ways. All the repairs were done under my supervision. After she was sunk she was brought up to the dock foot of 5th st., Hoboken, and there I saw her. She was hauled upon the ways at Hoboken; on those of the Hoboken Land and Improvement Company. I saw her there. She was all cut up by the chains in raising her by the damages done by the ferry-boat. The wound was in the bow. I can't now describe the extent of it. There was a photograph taken of it at the time she was on the ways. I examined her with a view to see whether she was worth repairing. I did it in connection with F. B. Stevens, who is our general superintendent. We came to the
140 conclusion that it would cost more to repair her than a new hull would cost. The connecting-rods were bent up all the way through and the machinery was all broken up in general, so that we could use it for nothing but scrap iron. We got about $1,500 for the old machinery. The hull was not worth enough to pay for breaking it.

Q. Has your connection with the co. and its steamers been such as to enable you to become acquainted with their value?

(Obj. to. Overruled and exception.)

A. Yes, sir.

Q. What was the fair value of the Fairfield at the time she was sunk?

(Obj. to. Overruled & exception.)

A. Twenty-one thousand dollars.

Adjourned to the 21st, at 10 a. m.

OCTOBER 21ST, 1872.—Present, counsel for respective parties.

Adjourned to the 24th inst., at 10 a. m.

141 OCTOBER 24TH, 1872.—Present, counsel for respective parties.

Cross-ex'd.:

Went into the employ of the co. 7 years ago last January. I could not tell where Fairfield then was. First saw her about May that year at the shops. She was then laying up. Laid up a day or so and then went to work. First went on board to examine her about that time. Can't tell what I then did to her. Went on her about every day up to time of collision. She lay at the dock, and it was my duty to go on board to enquire if any repairs were made. I was merely walking about the dock. She was in service all the time and would come to the dock every day. She was towing. Don't know how old she was nor how long she had been owned by the company. Can't say what length or width she was nor depth. Never examined her to see what material she was built of. Don't know who built her engine; it was low pressure;
142 don't know its age; think her cylinder was 42. I have measured it, but don't remember it; had occasion to measure it in boring it out; bored it out to make it true to fit the piston; had 10 feet stroke of piston. The repairs were put on her the spring of the collision. She was put in thorough repair. They were all done at once, except she broke her cast-iron shaft about 2 months after and we put a new wrought-iron one in. When she was repaired the water bottom of the boiler was overhauled and the furnace likewise, new grate-bars put in, and the boiler-room all lined with sheet-iron. By overhauling the water-bottom I mean that patches were put on it, and by overhauling the furnace I mean that patches were put on that. Don't know anything about age of boiler or engine; the enrollment will tell that, I presume. My business was that of a machinist. I superintended the overhauling of the hull. I am not a ship-builder. Mr. Wallace did the

woodwork, under my orders. He was a ship-builder. I directed
143 him on the repairs of the woodwork; on the particular items of woodwork to be done. The work then done on her hull was wearing-pieces put on her guards, and deck overhauled and caulked and all the details. Can't tell whether those were the chief items of woodwork, as I can't remember now. Don't know where she was sunk. The boiler was aft the shaft, I think; am not certain of it, & machinery also, *also*; can't tell exactly how near the bow was; think it was about amidships, probably 50 or 60 feet from bow. Henry Wallace was the ship-carpenter who made the repairs. Can't say where he is now. He was not in the co.'s employ, but in the employment of the Hoboken Land & Improvement Company. Have not seen him in 3 years; don't think he is now in the employ of that co. The boiler was injured by the slings in raising the boiler out of the boat at 5th st., Hoboken, where we lightened her before putting her on ways. The boiler
144 was fastened to the bottom of the boat and we had to tear it loose and in that way the injury occurred, and by the weight of the boiler; the boiler was nearly full of water. Possibly she might have been put into a sectional dock and in this case the water could have been taken out *out* of the boat and out of the boiler without removing the boiler. In that case the boiler could have been detached from the fastening without tearing it loose.

Adjourned to the 26th inst., at 10 a. m.

OCTOBER 26TH, 1872.—Adjourned to the 31st inst., at 2½ p. m.

OCTOBER 31ST, 1872.—Present, counsel for respective parties.
Adjourned to the 11th Nov., at 11 a. m.

NOVEMBER 11TH, 1872—Adjourned to the 14th inst., at 10 a. m.

NOVEMBER 14TH, 1872.—Present, counsel for respective parties.

FRANCIS B. STEVENS sworn on part of libellant.

145 I have charge of the Pennsylvania R. R. Co.' property at Hoboken, their wharves and buildings, and also all their steam-tugs numbering 16. This company is successor to the Camden & Amboy R. R. & Transportation Co. I had charge of all the construction & repairs of the steam-tugs & steamboats of that co. for 8 years. I bought also as well as built two steam-tugs for that co. in that period; never bought steamboat'.

(Any testimony relative to the lease spoken of taken subject to the objection that the lease must be produced.)

On the transfer of the property from one co. to the other I was selected as appraiser on the part of the Camden & Amboy Co. to appraise all the value of all their steamboat property in the waters of New York & Philadelphia. I knew the steamboat Fairfield. She belonged to the Camden & Amboy Company; think she belonged to that company
146 some 6 or 8 years before she was sunk. She was engaged in towing coal-barges in city of New York; am generally acquainted with the order in which she was kept. She was in excellent working condition; her hull was not good. She was a side-wheel boat. Her machinery was in excellent condition.

Q. Do you know how much was expended on her for general repairs the season she was sunk?

(Obj. to as not evidence of value. Overruled & exception.)

A. I expended on her for general repairs, between the 1st of January, 1866, and the middle of December, 1866, $8,200. This was principally to the engine, & some to the boiler, & some to the hull. These repairs added to her substantial value. I went to her after she was sunk. She was out of sight under water near Fulton Ferry, Brooklyn side. That is where I went to look for her. I superintended the raising of her. She was laying inclined; can't say whether stem or stern was lowest. She was heeled. I was engaged, more or less, all winter in
147 raising her. I placed her in the dry-dock in April, 1867; raised her by putting chains under her and barges alongside. I took her to Hoboken, about 1,000 feet from shore, and there struck bottom in about 30 feet of water. This was about *this was about* the same water she drew when we towed her round. We then kept raising her & towing her towards the shore day, sometimes gaining 10 feet in a day. When we got within 250 feet of shore I then employed Bishop's steam-derrick to take her boiler and machinery out. Her deck was then one foot under water at low water. After I got the boiler and machinery out I found it was necessary to take off her guards to get the barges near enough to her side to get her on to the dry-dock. She and the barges had to enter the dry-dock together. I had to blow the guards off by torpedoes after trying for 10 days other ways to get them
148 off. Then I put her on the dry-dock. I did not put her on the dry-dock with her machinery in her because I couldn't. I think the Erie basin was the only dock she possibly could have entered, and I don't know that she could enter there. I know the owners would not have allowed her to enter there on ⅞ of the risk of breaking some part of the wrecking fixtures. When she was raised the water run out. I found a very large hole in her, forward; vertically it extended from her keel to her deck, laterally, about 6 or 8 feet wide; had a photograph made of it. I knew before I got her on the dry-dock it would not pay to repair her, though she was not past repairing, and I was confirmed in this when I got her on the dock. Her machinery was very much broken, also her boiler. I came to the conclusion that they were not worth repairing. The boiler and engine, in my judgment, were worth
149 $1,500, and that was what the company realized for it. The wrecking machinery used in raising her belonged to four different parties, and they were hired by me. I directed the raising of her myself. At first I did not supervise it personally, but let a man named Dunn supervise it till she was brought to Hoboken, but it was done under my direction. I think the work was done as economically as it could have been done, considering the difficulties. We expended $6,200 in raising her and getting her on the dock. I have been connected with steamboats for upwards of 30 years.

Q. Were you sufficiently acquainted with the value of steamboats, and the Fairfield and her value, to enable you to give a judgment of her value immediately before she was struck?

(Obj. to; overruled, & exception.)

A. I think I am.

Q. What was it?

(Obj. to; overruled, & exception.)

A. It depends entirely on the basis on which she is valued. If
150 she was sold by auction, I think she certainly would have brought from $8,000 to $10,000. If a man had a route to put her on, I think she was worth from $12,000 to $14,000. Taking what it would cost to build such a boat, at the time she was sunk I think should cost about $56,000, and the depreciation was about ⅔ of that cost.

Adjourned to the 18th inst., at 2 p. m.

151 NOV. 18, 1872.—Parties present.

FRANK B. STEVENS, on cross-examination:

The Fairfield was purchased by the Camden & Amboy Railroad Company, I think, 10 or 11 years before she was sunk, but am not sure. I saw the Fairfield make her trial-trip when I was boy; it was in the year 1833. After that she was run on the Sound to Norwalk and intermediate places. I do not know who built the hull. I think that James P. Allaire built her engine. The collision took place *place* in December, 1866.

Q. What were the repairs you made on her between 1st of Jan'y and Dec., 1866?

A. It is so long ago that I cannot remember the details. Generally she was put in complete and thorough order. Her engines were as good as the day she was built. I do not know that she was running by
152 *by* Rich when purchased; was not in the employ of company when purchased, and do not know what she was doing. I bought two tugs just before the Fairfield was lost, from the Government, at auction. This was about a year before the Fairfield was lost. Don't know whether the Fairfield was purchased by the company at auction or private sale. Should think the hole made by the collision extended back from the stem between 12 & 20 feet. She was built principally of white-oak. Dunn removed her from Brooklyn to Hoboken before I personally took charge of her; before I became my own fireman. But while the work was going on at Brooklyn, I was there I suppose 10 times, but gave no orders until she came to Hoboken. I mean to the point where she struck the ground.

Redirect:

I have now a boat 17 years older than the Fairfield. (Obj. to.) She is the steamboat New York. She is still running. The bow
153 of the boat, where she was struck, was more than the rest of the boat. I do not think that the cost of bringing her to the point where she struck at Hoboken was much more than $1,000; indeed, I know it was not. I was notified after she struck at Hoboken to remove her from that point. I can give a general statement of the repairs that were put upon her between the first of Jan'y, 1866, and the middle of December of the same year, but cannot give all the details. She had a new shaft put in, and that both of her shafts new. She had had a new one put in about a year before. Her water-wheels were new, to the best of my belief. Her brasses were all renewed. She had new pistons; her cylinder was boxed out, making it as good as new; all the moveable parts of her engine were taken down, and everything defective made as good as new. All the joints were remade, and all
154 copper were replaced with new when necessary. The boiler was thoroughly overhauled; it was new only 5 or 6 years before. The hull was repaired. She was taken on the dry-dock and her bottom repaired; her guards were all cut off, and the facing and wearing pieces were all new. I wish to say why I put so many repairs on such an old boat. I commenced these repairs at the commencement of the year 1866, and previously to doing so I tried to purchase a tug to replace the Fairfield, but the prices asked at that date for a boat as good as she was for our purposes was too high.

(All the foregoing taken on redirect objected to as irrelevant, inadmissible, and because *on* the direct examination of the witness had been concluded, and no valid reason existed for calling *on* this testimony on the redirect.)

Q. How long, in your judgment, would the Fairfield have an-

155 swered the purposes of the company, with ordinary repairs, had she met with no accident, in the condition she was in?

A. Not long.

Q. Can you form any judgment?

(Obj. to.)

A. I cannot tell. Her engine was in perfect order, and her hull was poor. I think she would have been running still, but she would have been repaired. The Fairfield at the time of her loss 150 long; I do not know her tonnage; she was 23 feet beam, and about 9 feet depth of hold. She was not originally 150 feet; should think the new bow added from 15 to 20 feet to her length. Her engines were in such perfect order it would have *been*[paid us to have fixed up the hull.

(All the above seasonably objected to, on the grounds above stated.)

(Signed) FRANCIS B. STEVENS.]

156 DEC. 18TH, 1872.

FRANCIS B. STEVENS, in continuation:

The steamer Fairfield, while sunk, got full of mud in addition to water. She was in that condition when we put her on the ways at Hoboken. We were at work at her while lying in Brooklyn for two or three months before taking her to Hoboken. We were delayed by the ice and the weather, it being the winter season. I personally took charge of the operations a short time after she struck bottom at Hoboken. We were at work at Hoboken at her from six weeks to two months before we determined she was not worth repairing. While engaged at her at Hoboken, I gave a large portion of my time to her. By an enormous expenditure of from $10,000 to $20,000 we might possibly have got her on a dock without taking her machinery out in advance, but this is a matter of great uncertainty both as to get her on and being able to find a dock to let her on. The Erie basin was not completed while she was being raised. It was utterly impossible to unbolt the

157 machinery and take it out, while she was in the water and full of mud, without destroying it. We took the only feasible method of getting it out. I used the derrick, tools, and appliances of the company for the purpose of getting her up and out. There has been charges made for the use of the derrick, tools, and appliances of the company, or for the services rendered by me in my statement of the expenses. The rule that the company has is to charge about 30 % on the gross amount. That would have been a fair addition to the expenses heretofore testified to by me. I had not the slightest idea in the raising of the Fairfield of any ultimate recovery of any part of these expenses. My object was to make it as cheap for the company as possible. We wanted the use of the boat badly, and I did my best to save her. We had to pay $60,000 for the boat we built to replace her. The Fairfield certainly earned $15,000 in the year 1866. If the accident had not have happened, I would have in all probability *have* put her hull in excellent condition. I do not

158 think a sale at auction is any fair test of the value of a steamer. It was not until she was on the dock that I finally determined that no use whatever could be made of her. The machinery was very much damaged by the ice while she lay in the East River, and also in raising her in the East River, and also afterwards at Hoboken in raising her.

FRANCIS B. STEVENS.

Testimony closed.

(Endorsed:) Filed June 4, 1873.

159 Circuit court of the United States for the southern district of New York.

*Commissioner's report.*

THE CAMDEN & AMBOY RAILROAD AND TRANSportation Company
*vs.*
THE STEAM FERRY-BOAT AMERICA, &c.

In pursuance of a decretal order made in the above-entitled cause, on the day of in the year of our Lord one thousand eight hundred and , by which, among other things, it was referred to the undersigned, one of the commissioners of this court, to ascertain and compute the amount due the libellant for its damages, and to report thereon to this court with all convenient speed:

I, Kenneth G. White, the commissioner, to whom the matter was referred, do report that I have been attended by the proctor for the libellant and by the proctor for the respondent, and have taken and examined the testimony offered in support of the libellant's claim, and do find that there is due to the libellant for the value of—

| | | |
|---|---|---|
| Steamboat Fairfield, sunk by collision | | $9,000 |
| Interest on same from Dec. 15, '66 | | 3,815 |
| | | $12,815 |
| Expenses of raising Fairfield, &c. | $5,000 | |
| Less salvage | 1,500 | |
| | | 3,500 |
| 160 Interest from April 1, 1867, to January 1, 1873, 5 years & 9 months | | 1,408 75 |
| Total | | $17,723 75 |

Dated the fourth day of January, A. D. 1873.
All of which is respectfully submitted.

KENNETH G. WHITE,
*U. S. Commissioner.*

(Endorsed:) United States circuit court for the southern district of New York. Camden & Amboy Railroad & Trans'n Company vs. the Steam Ferry-Boat America, &c. Commissioner's report. Filed the 4th day of January, 1873. Confirmed Jan'y 7, 1873.

161 Circuit court of the United States, southern district of New York.

THE CAMDEN AND AMBOY RAILROAD & TRANSportation Company
*vs.*
THE STEAM FERRY-BOAT AMERICA, HER tackle, &c.

The claimants except to the report of the commissioner herein.

First. Because he has allowed interest on the amount which he determines to be the value of the steamboat Fairfield, whereas he should not have allowed such interest.

Second. Because he has allowed interest on the amount which he determines to have been the expense of raising said steamboat Fairfield, whereas he should not have allowed such last-mentioned interest.

BENJ. D. SILLIMAN,
*Proctor for Claimants.*

(Endorsed:) U. S. circuit court, southern district of New York. The Camden & Amboy Railroad & Transportation Company vs. the
162 Steam Ferry-Boat America, her tackle, &c. Exceptions to commissioner's report. Benj. D. Silliman, pr. for cl'ts. Filed Jan'y 7, 1873.

163 Circuit court of the United States, southern district of New York.

THE CAMDEN AND AMBOY RAILROAD & TRANSportation Company
*against*
THE STEAM FERRY-BOAT AMERICA, HER tackle, &c.

The claimants hereby further except to the commissioner's report in this case as follows; that is to say—

"Third. Because he has allowed an amount, to wit, the sum of $3,500, and interest thereon, which he determines to have been the expense, less salvage, of removing said steamer Fairfield from the place where she was sunk to Hoboken, in New Jersey, and there raising and placing her on the ways. Whereas he should not have made an allowance, either of principal or interest, therefor."

(Endorsed:) Circuit court of the United States, southern district of New York. The Camden & Amboy Railroad & Transportation Company against the Steam Ferry-Boat America, her tackle, &c.
164 Additional exception. B. D. Silliman, pr. for clts. Filed May 8, 1873.

165 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Wednesday, the third day of December, in the year of our Lord one thousand eight hundred and seventy-three:

Present, the honorable Lewis B. Woodruff, circuit judge.

THE CAMDEN & AMBOY RAILROAD & TRANSportation Company, libellants & appellees,
*v.*
THE STEAM FERRY-BOAT AMERICA, HER tackle, &c., the Union Ferry Company of Brooklyn, claimants & appellants.

The exceptions to the commissioner's report coming on to be heard in the above-entitled cause, Mr. Benjamin D. Silliman is heard in behalf of the claimants & appellants and in favor of exceptions.

166 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms in the city of New York,

Thursday, the seventh day of December, in the year of our Lord one thousand eight hundred and seventy-three.

Present, the honorable Lewis B. Woodruff, circuit judge.

THE CAMDEN & AMBOY RAILROAD & TRANSportation Company, libellants & appellees,
*v.*
THE STEAM FERRY-BOAT AMERICA, HER tackle, &c., the Union Ferry Co., &c., claimants & appellants.

The above-entitled cause being still on hearing, on exceptions to the commissioner's report—

Mr. B. D. Silliman continues his argument in behalf of the claimants & appellants.

Mr. Charles Donohue is heard in reply.

Mr. Silliman closes.

Cur. adv. vult.

167 Circuit court of the United States for the southern district of New York.

THE CAMDEN AND AMBOY RAILROAD AND Transportation Company
*vs.*
THE STEAMBOAT AMERICA.

WOODRUFF, *Circuit J.*:

I think the exceptions filed in this case were properly overruled. There is nothing to show that the libellants did not exercise a just and wise discretion in raising the Fairfield. Until she was raised it was impossible to determine whether she could be repaired without too great expense. Indeed, had she not been raised and the libellants had come into court claiming her value, the objection that they should have raised her, or proved that she could not be raised and repaired, would have been effectively urged by the claimants of the America. The libellant was at liberty, and in fact bound, to go far enough to enable proof to be given of the extent of loss, and the proof does not show that more than that was done.

As to interest, it has been often said that in acts of tort,
168 where the damages are liquidated, interest is not to be allowed as matter of law, but it rests in the discretion of the jury. The proposition is not unqualifiedly true without exception. Thus, in actions of trover, which is an action of tort, the value of the property, with interest thereon, is held to be the rule of damages. Where the value of the thing lost, or the cost of repairs and the like, are the test or measure of recovery, and the amount of damages becomes mere matter of computation, interest is as necessary to indemnify as the allowance of the principal sums.

But if the allowance of interest rests in discretion, still the indemnity of the party for injury from a collision occurring through the fault of another vessel, should be the object of the court in the allowance of damages. In this view, such allowance was, I think, proper. It is in such case not allowed as punishment. It is not like the allowance of punitive damages in actions of slander, assault & battery, and like cases. It gives indemnity only.

Let the exceptions be overruled, and a decree be entered for the amount reported.

(Endorsed:) Circuit court of the United States for the southern dist. of N. Y. The Camden & Amboy R. R. & Trans'n Co. v. The Steam Ferry-Boat the America, &c. Woodruff, circuit j. Filed Feb. 19, 1874.

169 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Friday, the 27th day of March, in the year of our Lord one thousand eight hundred and seventy-four:

Present, the honorable Lewis B. Woodruff, circuit judge.

THE CAMDEN AND AMBOY RAILROAD & Transportation Company, libellant & appellant,
*vs.*
THE STEAM FERRY-BOAT AMERICA, HER tackle, &c., the Union Ferry Company of Brooklyn, claimant & appellee.

The above cause coming on to be heard on exceptions to the commissioner's report, and after hearing the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed that the said exceptions be, and the same are hereby, overruled.

And it is further ordered that the libellant and appellant recover, in this action, the sum of seventeen thousand seven hundred and twenty-three $\frac{75}{100}$ dollars for the damages sustained by the collision mentioned in the pleadings, together with interest thereon from the fourth day of January, one thousand eight hundred and seventy-three, amounting to the sum of fifteen hundred and fourteen $\frac{92}{100}$ dollars; and also the costs of the district court, which have also been taxed at the sum of three hundred and thirty-seven $\frac{54}{100}$ dollars, and the costs of this court, which have been taxed at the sum of three hundred and
170 forty-eight $\frac{37}{100}$ dollars, making an aggregate of nineteen thousand nine hundred and twenty-four $\frac{58}{100}$ dollars, and that the said Steam Ferry-Boat America, her tackle, &c., be condemned therefor.

And it is further ordered, adjudged, and decreed that unless the last-mentioned sum of be paid, or an appeal be taken with security, so as to stay proceedings within the time limited by law and the rules and practice of this court, the appellant have execution, according to the course and practice of this court, to satisfy said decree.

(Signed) L. B. WOODRUFF,
*Circuit J.*

Correct.
BEEBE & DONOHUE,
*For Appellants.*
Correct as to form.
B. D. SILLIMAN,
*For Clmts.*

(Endorsed:) U. S. C. C., S. D. N. Y. The Camden & Amboy R. R. & Transpn. Co. vs. the Steam Ferry-Boat America, &c. Decree filed March 27th, 1874.

171 U. S. circuit court, southern district of New York.

THE STEAM FERRY-BOAT AMERICA, HER tackle, &c., the Union Ferry Company of Brooklyn, claimants, &c.,
*vs.*
THE CAMDEN AND AMBOY RAILROAD AND Transportation Company, libellants.

Please take notice that the claimants intend to appeal, and do hereby appeal, to the Supreme Court of the United States from certain decrees of the circuit court of the United States for the southern district of New York, in your favor, against the said steam ferry-boat America, her tackle, &c., and her claimants, and from the whole and every part of said decrees.

March 28, 1874.

Yours, &c.,

BENJ. D. SILLIMAN,
*Proctor for Claimants, Appellants.*

To BEEBE & DONOHUE, Esq.,
*Proctors for Libellants & Appellees.*

To the clerk of the circuit court of the United States for the southern district of New York.

172 (Endorsed:) U. S. circuit court. The Ferry-Boat America, her tackle, &c., the Union Ferry Company of Brooklyn, claimants, vs. The Camden and Amboy Railroad & Transportation Company, libellants. Notice of appeal. Benj. D. Silliman, pr. for clts.

Due service of a notice of which the within is a copy is hereby admitted.

BEEBE & DONOHUE,
*Proctors for Libellants.*

Filed Mch. 31, 1874.

173 Circuit court of the United States for the southern district of New York.

THE STEAM FERRY-BOAT AMERICA, HER tackle, &c., The Union Ferry Company, of Brooklyn, claimants, appellants,

THE CAMDEN AND AMBOY RAILROAD AND Transportation Company, libellants, appellees.

To the honorable the Supreme Court of the United States:

The petition and appeal of the Union Ferry Company, of Brooklyn, the above-named claimants and appellants, respectfully showeth—

That on the 10th day of January, A. D. 1867, the above-named The Camden and Amboy Railroad and Transportation Company filed their libel in the district court of the United States for the southern district of New York against the ferry-boat America, her tackle, apparel, &c., in a cause, civil and maritime, for the recovery of damages alleged to have been sustained by them to the steamer Fairfield, by col-
174 lision with the said ferry-boat America, on the East River, in

the State of New York, and that your petitioners filed their claim and entered into stipulations, and filed their answer to said libel; and that such proceedings were had in the said cause, that, on the 23d day of October, 1869, a final decree was made and pronounced therein by the said district court, wherein it was adjudged that the libel of the said libellants be dismissed with costs.

And that after such final decree the libellants duly appealed therefrom to the circuit court of the United States for the southern district of New York, and the said cause was removed thereby into the said circuit court, and there tried anew, and such proceedings were had in the said circuit court, that a decree was made in said cause by said circuit court, whereby it was ordered and adjudged that the decree of the district court be reversed, and that the libellants have a decree to recover their damages and costs, and that it be referred to a commissioner to ascertain and compute the amount of such damages, and report thereon to the court;

That the commissioner to whom it was thereupon referred
175 thereafter duly filed his report, together with the evidence taken before him on such reference, bearing date the 4th day of January, A. D. 1873, wherein and whereby he reported the damages sustained by the libellants at the sum of $\$17{,}723\frac{75}{100}$ dollars, and that the claimants excepted to said report;

That thereafter, and on the 27th day of March, A. D. 1874, the said circuit court made a final decree in the said cause, whereby the said exceptions were overruled and said report confirmed, and it was decreed that the libellants recover against the ferry-boat America, her tackle, &c., the sum of $19{,}924\frac{58}{100}$ dollars, and that the said libellants have execution therefor; which said decrees of the said circuit court are, as these appellants are advised, erroneous and ought to be reversed.

Wherefore these appellants appeal from the whole of said decrees of the said circuit court to the Supreme Court of the United States, and respectfully pray that the said decrees of the said circuit court, and the libel, answer, pleadings, depositions, evidence, and proceedings in the said cause, may be sent to the Supreme Court of the United States without delay; and that the said Supreme Court will proceed to hear the said cause anew, and that the said decrees of the circuit court and
176 every part thereof may be reversed, and a decree made, dismissing said libel with costs, or such other decree as to the said Supreme Court shall seem just.

March 28, 187 .

BENJ. D. SILLIMAN,
*Proctor for Claimants, Appellants.*

(Endorsed:) Circuit court of the United States for the southern district of New York. The Steam Ferry-Boat America, her tackle, &c. The Union Ferry Company of Brooklyn, claimant, appellant, *vs.* The Camden and Amboy Railroad and Transportation Company. Petition & appeal. B. D. Silliman, pr. for clts.

Due service of a petition & appeal, of which the within is a copy, is hereby admitted.

BEEBE & DONOHUE,
*Proctors for Appellees.*

Filed March 31, 1874.

177 Circuit court of the United States of America for the southern district of New York, in the second circuit.

THE STEAM FERRY-BOAT AMERICA, HER TACKLE, &c., the Union Ferry Company of Brooklyn, appellants & claimants, *ads.* THE CAMDEN & AMBOY RAILROAD AND TRANSportation Company, libellants & appellees. } Bond for costs.

Know all men by these presents that we, the Union Ferry Company of Brooklyn, and Cyrus P. Smith, are held and firmly bound unto the above-named, the Camden & Amboy Railroad & Transportation Company in the sum of forty thousand dollars, to be paid to the said appellees, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated the twenty-eighth day of March, in the year of our Lord one thousand eight hundred and seventy-four.

Whereas the above-named appellants have prosecuted their appeal to the Supreme Court of the United States, to reverse the decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named appellants shall prosecute their said appeal to effect, and answer all damages and costs if they fail to make their said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

The Union Ferry Company of Brooklyn—

By C. P. SMITH,
*Managing Director.*

C. P. SMITH. [L. S.]

Sealed and delivered, and taken and acknowledged, this 28th day of March, 1874, before me.

[L. S.]

WM. B. LEWIS,
*Notary Public.*

178 UNITED STATES OF AMERICA,
*Southern District of New York, ss:*

Cyrus P. Smith, being duly sworn, doth depose and say that he is worth the sum of forty thousand dollars over and above all his just debts and liabilities.

C. P. SMITH.

Sworn to this twenty-eighth day of March, A. D. 1874, before me.

WM. B. LEWIS,
*Notary Public.*

We approve of and consent to the within bond as to form and as to the sufficiency of the surety thereon and the execution thereof.

March , 1874.

BEEBE & DONOHUE,
*Proctors for Libellants, Appellees.*

Approved:

SAML. BLATCHFORD,
*District Judge.*

(Indorsed:) Vol. , page . U. S. circuit court. The America, the Union Ferry Company of Brooklyn, claimants, appellants, ads. The Camden & Amboy Railroad, &c., Co. Bond for costs on . B. D. Silliman, proctor for claimants, appellants. Filed this 31 day of March, 1874.

179 United States Supreme Court.

THE STEAM FERRY-BOAT AMERICA, HER TACKLE, &c., the Union Ferry Company of Brooklyn, claimants & appellants,
*ads.*
THE CAMDEN AND AMBOY RAILROAD AND TRANSportation Company, libellants & appellees.

By the honorable Samuel Blatchford, one of the judges of the circuit court of the United States for the southern district of New York.

To the Camden and Amboy Railroad and Transportation Company:

Whereas the Union Ferry Company of Brooklyn, claimants of the steam ferry-boat America, her tackle, &c., have lately appealed to the Supreme Court of the United States from the whole and every part of certain decrees lately rendered in the circuit court of the United States for the southern district of New York in your favor against the said steam ferry-boat America, her tackle, &c., and her claimants, and have filed the security required by law: You are therefore hereby cited
180 to appear before the said Supreme Court, at the city of Washington, on the second Monday of October, eighteen hundred and seventy-four, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, in the second circuit, the 28th day of March, eighteen hundred and seventy-four.

SAML. BLATCHFORD.

(Endorsed:) Supreme Court of the United States. The Ferry-Boat America, her tackle, &c., the Union Ferry Company of Brooklyn, claimants & appellants, vs. The Camden and Amboy Railroad and Transportation Company, libellants and appellees. Citation. Benj. D. Silliman, pr. for cl'ts, 43 Wall st.

We hereby admit due service of a copy of the within citation, and consent that such service have the same effect as if this citation were served personally on the libellants & appellees.

Dated March 31, 1874.

BEEBE & DONOHUE,
*Proctor' for Appellees.*

181 UNITED STATES OF AMERICA,
*Southern District of New York, ss:*

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to 180, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of the Camden and Amboy Railroad and Transportation Company, libellants & appellees, against the Steam Ferry-Boat America, her tackle, &c., the Union Ferry Company

of Brooklyn, claimants & appellants, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of New York, in the second circuit, this 31st day of July, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the said United States the ninety-ninth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

(Indorsement on cover:) No. 219. The Steam Ferry-Boat America, her tackle, &c., the Union Ferry Company of Brooklyn, claimants, appellants, vs. The Camden and Amboy Railroad and Transportation Company. S. New York C. C. U. S. Filed 10th August, 1874.

# Supreme Court of the United States.

THE STEAM FERRY BOAT "AMERICA," HER TACKLE, &C.—(THE UNION FERRY COMPANY OF BROOKLYN, *Claimants*,)

APPELLANTS,

*ads.*

THE CAMDEN AND AMBOY RAILROAD AND TRANSPORTATION COMPANY, *Libellants*,

RESPONDENTS.

## Brief for (Claimants) Appellants.

BENJ. D. SILLIMAN,
PROCTOR FOR CLAIMANTS.

BEEBE & DONOHUE,
PROCTORS FOR LIBELLANTS.

NEW YORK:
E. B. TRIPP, PRINTER AND STATIONER,
105 Fulton Street.

1876.

# Supreme Court

OF THE UNITED STATES.

---

The Steam Ferry-boat *America*, her Tackle, &c. (The Union Ferry Company of Brooklyn, *Claimants*),

*Appellants*,

*ads.*

The Camden and Amboy Railroad and Transportation Company, Libellants,

*Respondents.*

*Brief of Appellants.*

*IN ADMIRALTY.*

This is an appeal by the claimants from a decree of the Circuit Court for the Southern District of New York, reversing the decree of the District Court.

The suit was brought by the libellants, as owners of the steam tug *Fairfield*, against the steam ferry-boat *America*, to recover damages for injuries sustained by the *Fairfield* in a collision with the *America*, in the East river, in the harbor of New York, on the 13th of December, 1866. The bows of the two vessels came together, and the *Fairfield* was so injured as to sink on reaching the wharf in Brooklyn.

The case was tried before his honor Judge Blatchford, and a decree was made by him, in October, 1869, dismissing the libel. *Case, fol.* 115.

The libellants appealed to the Circuit Court, where a decree was made by his honor the late

Judge Woodruff, in September, 1872, reversing the decree of the District Court, and directing a reference. *Case, fol.* 136, which was had, and exceptions thereto by claimants were overruled. *Fol.* 168.

From the final decree the claimants appeal to this Court. *Case, fol.* 173.

On this appeal the claimants submit that the decree of the District Court was correct, and should have been affirmed; and that

1. The case stated by the libel was not only not sustained by the libellants' own proofs, but was shown by conclusive evidence to have been impossible.

2. On the proofs of what did occur, the error was shown to have been that of the *Fairfield*, libellants' vessel, and in no respect that of claimants' vessel, the *America*.

3. The error (as it is respectfully claimed to have been), of the Circuit Court in reversing the decree of the District Court—resulted from misapprehension as to the material facts.

---

As the opinion of the District Court, by Judge Blatchford, is not contained in the record, and as it concisely and clearly states the outline of the case and the pleadings, it is here inserted. *From* 3 *Benedict's Reports*, 424.

Blatchford, J. This is a libel, filed by the owners of the steamboat Fairfield, against the steam ferry-boat America, to recover for the damages caused to the Fairfield by a collision, which took place between her and the America, on the 13th of December, 1867, at about five o'clock in the afternoon, in the East river, between New York and

Judge Woodruff, in September, 1872, reversing the decree of the District Court, and directing a reference. *Case, fol.* 136, which was had, and exceptions thereto by claimants were overruled. *Fol.* 168.

From the final decree the claimants appeal to this Court. *Case, fol.* 173.

On this appeal the claimants submit that the decree of the District Court was correct, and should have been affirmed; and that

1. The case stated by the libel was not only not sustained by the libellants' own proofs, but was shown by conclusive evidence to have been impossible.

2. On the proofs of what did occur, the error was shown to have been that of the *Fairfield*, libellants' vessel, and in no respect that of claimants' vessel, the *America*.

3. The error (as it is respectfully claimed to have been), of the Circuit Court in reversing the decree of the District Court—resulted from misapprehension as to the material facts.

---

As the opinion of the District Court, by Judge Blatchford, is not contained in the record, and as it concisely and clearly states the outline of the case and the pleadings, it is here inserted. *From* 3 *Benedict's Reports*, 424.

BLATCHFORD, J. This is a libel, filed by the owners of the steamboat Fairfield, against the steam ferry-boat America, to recover for the damages caused to the Fairfield by a collision, which took place between her and the America, on the 13th of December, 1867, at about five o'clock in the afternoon, in the East river, between New York and

Brooklyn, a short distance below the Brooklyn slip of the Fulton Ferry. The Fairfield was going down the East river, having come from the Navy Yard, at Brooklyn, and being bound into the North river, around the Battery. The America was a boat running on the Fulton Ferry, from the slip at the foot of Fulton street, New York, to the slip at the foot of Fulton street, Brooklyn, and was at the time on a trip from New York to Brooklyn. The tide was strong ebb. The case made by the libel is, that the Fairfield was going down, at about the middle of the river, when the America left her slip on the New York side; that, as the vessels neared each other, a single whistle was blown by the Fairfield, to indicate her intention to go to the right, and the wheel of the Fairfield was put to port, and her head sheered angling towards the New York shore; that the America paid no attention to the whistle of the Fairfield, but continued to haul more up the river, and on to the Fairfield; that, as it was found that the America was rapidly hauling on to the Fairfield, and still continuing to head more and more up the river, and that a collision, if the America kept on, would probably happen, the bells of the Fairfield were rung to slow, stop, and back; that these orders were promptly obeyed, and the headway of the Fairfield was nearly, if not quite, stopped in the water; that, while the Fairfield was in that condition, the America blew two whistles, indicating her intention to go to the left; that, at that time, the America was so close to the Fairfield that the Fairfield, her engine and way being stopped, could do nothing except continue to back her engine; that the America kept on, at nearly, if not quite, full speed, and struck the stem of the Fairfield, a little on the larboard side, crushing in her planks and timbers, and opening her forward; and that the Fairfield commenced to take in water rapidly, and was backed into a slip below the Brooklyn terminus of the Fulton Ferry, and there sank in a few moments. The libel alleges that the collision happened through the carelessness, negligence, and want of skill and management of those navigating the America, and, among other things, in not having good and sufficient lookouts, in not promptly answering the single whistle of the Fairfield, in hauling up the river in such a manner as to bring her upon the Fairfield, in not keeping to

the right, in blowing two whistles, and attempting to go to the left of the Fairfield, when the Fairfield was lying dead in the water, and when she was so near to the Fairfield that a collision could not be avoided, in passing outside of the Fairfield, and then steering up the river and towards the Fairfield, and in not slowing, stopping, and backing before the collision was inevitable. The libel also avers that the management and navigation of the Fairfield were correct and proper, as it was her duty to keep to the right, and to indicate her intention by a single whistle, and, when she found that the America disregarded her signals, and continued to sheer on to her, to slow, stop, and back.

The answer alleges that, when the America was within about 200 yards of the Brooklyn shore, and about 250 or 300 yards of her slip on the Brooklyn side of the river, and was heading up the East river, against a strong ebb tide, for the purpose of getting room to swing into said slip, her pilot discovered the Fairfield, under full headway, heading down the river, and towards the Brooklyn shore, on a course which, if continued, would have carried her in front of and past the America, on the side towards the Brooklyn shore; that thereupon the America kept steadily on her course up the river, in order that the Fairfield might keep her course, and pass in front of the America, as she could easily have done, without any collision; but the Fairfield, after continuing said course until within a short distance of the America, and when the Fairfield was under full headway, and when it was impossible for the boats to so change their course as to pass each other on the right without colliding with each other, blew one whistle, indicating her intention to pass on the right, and outside of the America, and simultaneously put her helm hard to port, and in that way steered directly towards the America; that, as soon as the Fairfield so sheered and blew her whistle, it was obvious that she would strike the America on the starboard side, unless the America could be so sheered as to receive the blow upon her bow, or as to admit of the Fairfield's passing on the opposite side of the America, or of striking her a quartering instead of a full blow on her side; that the only course which the pilot of the America could thereupon properly adopt, to prevent the America from

being struck on her starboard side, and being cut through, was to give one whistle as a signal, so that the Fairfield might put her helm as hard a-port as possible, and to put the helm of the America hard a-port at the same time; that all this was immediately done by the pilot of the America, and she was immediately stopped, and her engines were backed, and she had stopped her headway by the land, when the Fairfield, continuing her course directly towards the America, struck her, the two vessels colliding head and head; and that the collision was caused wholly by the carelessness, negligence, and want of skill and management of the persons navigating the Fairfield, and, among other things, in not having a good and sufficient lookout, or a competent pilot, in blowing one whistle, and putting her helm to port, and attempting to pass the America on the right, when she had sufficient room to pass the America on the left, and when her course, if continued, would have taken her past the America on the left, and when it was plain that an attempt to pass on the right would probably bring about a collision, and in not slowing, stopping and backing before the collision became inevitable, or so as to lessen the force of the same.

In looking into the libel, the first thing that arrests attention is the fact, that it does not state how the two vessels bore from each other, or how they were approaching each other when the Fairfield blew a single whistle, and put her helm to port. It only states, that, as the vessels neared each other, the whistle was blown by the Fairfield, and her helm was put to port, and her head was sheered angling towards the New York shore. This averment is entirely consistent with the statement in the answer, that the blowing of the whistle by the Fairfield, and the putting of her helm to port, and the sheering that followed, took place when the Fairfield was on a course heading towards the Brooklyn shore, which, if continued, would have carried her in front of and past the America, on the side towards the Brooklyn shore, without any collision.

It is not pretended in the libel, that there was any risk of collision, when the Fairfield blew her whistle and ported, or that the vessels were then meeting end on, or nearly end on,

so as to involve risk of collision, nor have the libellants attempted to show by proof any such state of things. The whole case made by the libel is, that, inasmuch as the Fairfield blew a single whistle, and ported, it was the duty of the America to do the same; that the America failed to do so; and that, therefore, the America is solely responsible for the collision. The theory of the libel is based on the too prevalent and erroneous notion, that a steam vessel has a right, by the use of her steam whistle, to select for herself a particular course, and prescribe to another steam vessel a particular course, without regard to the provisions of the Act of Congress of April 29th, 1864 (13 *U. S. Stat. at Large*, 58), for preventing collisions on the water. If there was no risk of collision the moment before the Fairfield blew her whistle and ported, it was not her duty to port, and it was not incumbent on the America to port, and the Fairfield could not, by making a signal, impose any such obligation on the America. The libel makes out no case requiring the America to port her helm, under article 13 of the said Act. That article provides as follows: "If two ships under steam are meeting end on, or nearly end on, so as to involve risk of collision, the helms of both shall be put to port, so that each shall pass on the port side of the other." This rule applies only to steamers meeting, and only to steamers meeting end on, or nearly end on, and only when there is risk of collision. It does not apply when the courses of the two steamers are such that there is no risk of collision. It does not apply to two steamers which must, if both keep on their respective courses, pass clear of each other. The only cases in which it applies are when each of the two vessels is end on, or nearly end on, to the other—that is, cases in which, by day, each vessel sees the masts, or the line of the keel, of the other, in a line, or nearly in a line, with her own masts, or the line of her own keel, and cases in which, by night, each vessel is in such a position as to see both of the side-lights of the other vessel. It does not apply to cases in which, by day, a steamer sees another steamer ahead, crossing her own course; nor, by night, to cases where the red light of one steamer is opposed to the red light of the other, or where the green light of one steamer is opposed to the green light of the

other, or where a red light without a green light, or a green light without a red light, is seen ahead, or where both the green and the red lights are seen anywhere but ahead. No case is made by the libel, authorizing the Fairfield to port, or requiring the America to port. Nor does the testimony on the part of the Fairfield make out a case of meeting end on, or nearly end on, at the time the Fairfield blew her single whistle and ported. On the other hand, the answer, and the testimony on the part of the claimants, make out a case where the Fairfield was on a course that would have carried her between the America and the Brooklyn shore, and the America was on a course that would have carried her to the New York side of the Fairfield, and the courses of the two vessels were such, when the Fairfield blew her single whistle and ported, that there would have been no collision, if both vessels had kept such courses.

I think that the weight of the evidence is decidedly in favor of the statement contained in the answer as to the positions and courses of the two vessels at the time the Fairfield blew her single whistle and ported. If so, it follows that the Fairfield, by porting, and attempting to cross the bows of the America, from the starboard side of the latter to her port side, left a course where there was no risk of collision, and threw herself in the way of the America, so as to make a collision inevitable.

Unless the story in the answer is true, the collision could not have happened as it did, and the two vessels could not have struck each other in the way they did. For, as the Fairfield ported, and sheered towards the New York shore, the America, which was farther towards the New York shore than the Fairfield was, ported and sheered towards the Brooklyn shore, so as to avoid being struck on her starboard side by the Fairfield, and so as to receive the blow nearly on her bow, which was done. On the testimony of the pilot of the Fairfield, the collision could never have happened as it did. The Fairfield could not have been as far over towards the New York shore as is claimed for her by him. For, if she had been, inasmuch as the tide was ebb, and the America had rounded up the river, and could not have done so, on an ebb tide, until she was well over towards the Brooklyn

shore, the vessels could not have come together bow on, as they did, after the Fairfield had ported. On the whole evidence, the collision took place through the fault of the Fairfield in porting and attempting to cross the bows of the America, when she had no right to do so. I see no fault in the navigation of the America. Her pilot heard the single whistle of the Fairfield when it was blown, and noticed her porting as soon as it took place, and he immediately stopped and reversed his engine, and ported his helm, to change the direction of the coming blow.

The libel is dismissed, with costs.

---

Though much testimony was taken, that on which it is believed the decision must depend is of limited amount.

## POINT I.

*As to the relative vigilance, or lack of it, of the two vessels.*

The Court will be struck, at the outset, by the contrast in the degree of care and vigilance, with which the two steamers were managed at the time.

It was towards evening in December, the ebb tide runing three and a half to four miles an hour (*Smith, claimants' wit. fol.* 110; *Baulser, do. fol.* 67); and, though not yet dark, night approaching; and both steamers carrying lights; (*Quick, libellants' wit. fol.* 30; *Baulser, claimants' wit. fol.* 74); in a narrow and rapid part of the river; the track of the *Fairfield* being across those of a constant series of ferries, (*Radcliff, libellants' wit. fol.* 22); to say nothing of the numbers of vessels at all times passing, and of vessels anchored in the stream.

If there is any part of the harbor requiring special vigilance, and that every vessel navigating it should have her master and mariners on hand, and all her means of proper navigation, in full exercise, it is this part of the river under such circumstances. Ferguson, (libellants' fireman), who left his boiler to act as engineer on the occasion, professing to have noticed, as he passed from the hold to the engine room, that the *Fairfield* was then in the middle of the river, assigned as his reason for making so improbable an observation, that the place is

"Dangerous with ferry-boats and schooners, and I "always keep a bright look out there." (Fol. 45.)

"It is manifest on account of the extent of the shipping constantly passing through the East River at this point of it, that the greatest vigilance is required in the navigation of the stream by vessels passing up or down it. More especially is this so by reason of the constant passage of ferry-boats across the river. The extent of this business can hardly be overstated. Millions of passengers are transported between Brooklyn and New York annually, and of necessity the boats must make their trips with regularity by night as well as by day, and in all kinds of weather. All persons who seek the waters of this river must observe the rules which tend to the safety of navigation." * * * * * * (*Per Mr. Justice Davis, in delivering the opinion of the Court in The Favorita*, 18. *Wallace, on p.* 600.)

Instead of the special vigilance thus requisite at this place, special negligence marked the navigation of the *Fairfield.* The libellants' own testimony shows that her deck was absolutely deserted by her officers and crew, (except the man at the wheel), "the captain, mate, and all hands" having gone, at the outset of their hazardous trip, into the cabin, where they were leisurely taking their supper, dur-

ing a quarter of an hour or more (*Radcliff, fol.* 27), down to the time of the alarm immediately before the collision. Even the engineer had deserted his engine, and the fireman had deserted his boiler, with its valves, blowers, and stop-cocks, to take the place of the engineer. (Libellant's witnesses *Quick*, the captain, (fol. 31); *VanKeuren*, the engineer, (*fol.* 49); *Ferguson*, the fireman, (*fol.* 42); *Fitzsimons*, deck-hand, (*fol.* 55); and *Quick*, deck-hand, (*fol.* 61).

Such was the plight in which the *Fairfield* was passing down this reach of the river, at the rate of nine or ten miles through the water, and with a three and a half, or four miles, ebb tide under her.

Even the earlier signals, preceding the collision, did not recall them to the deck. The captain of the *Fairfield*, testifies that while sitting at his supper he heard his boat's whistle to the *America*. He did not leave the table; then he heard another signal by bell for his boat to slow—then another to stop—then another to back. None of these disturbed his quiet, or his meal. Then came still another bell to back strong—and not until after *all* these signals, (the bell to stop indicating difficulty, and each of the two bells to back indicating peril), did he leave the cabin for the deck. (*J. Quick, libellants' captain, fols.* 31, 32, *Ferguson, fol.* 43.)

"The master should be on deck at critical points of navigation. If he is below, and a collision occurs, the vessel is presumably in default for want of maintaining a sufficient watch." *The Nautilus, Ware*, (*2d ed.*) 529.)

A commander of a steamer who, after hearing the whistle of an approaching vessel, goes below to look after freight without special cause, must be ad-

judged in fault if a collision occurs before his return to his post. (*8th Circ. Mo. Hazlett vs. Conrad*, 1 *Dill.* 79.)

Even VanKeuren, the *engineer*, did not leave his meal until after he heard the last alarm bell "to back her strongly," and when he got about "half way to the engine-room the boats came together" * * * (*fol.* 50.)

By such desertion of the deck by the master and all hands, the Court is left with but one person who was on board the *Fairfield* (the man at the wheel, *Radcliff*) to give any testimony as to what occurred on her part from her first seeing the *America* down to the moment immediately preceding the collision.

The *America*, on the other hand, appears to have been conducted with strict care and vigilance. Her pilot, engineer and look-out were at their respective posts. Nothing of proper attention was wanting in the performance of their duty.

There were a thousand passengers on the *America*, most of them on the deck, and great numbers on the forward part of the vessel. (*Baulsir*, *fol.* 67-75).

With such opposite conditions of the two vessels, no presumption exists in favor of the *Fairfield*, but when she comes into Court, asking damages for the collision, every presumption is against her.

## POINT II.

*Have the libellants proved their case as stated in the libel?*

1*st.*

Their version of it is given by *Radcliff*, the man at the wheel of the *Fairfield.*

He begins (*case, fol.* 10), by squarely contradicting the statement of the libel (*at fol.* 2), that the *Fairfield* "on the day above stated had towed a "number of boats from New Brunswick to the port "of New York," and then proceeds to state that he saw the *America* just as she emerged from her slip at Fulton Ferry, on the New York side of the river, and that he was at the time, abreast of Market street, New York (*fol.* 11).

A statute of New York, (Laws of 1848, ch. 321), enacted especially for the security of lives of passengers on the ferries, requires steamers passing up or down this part of the East river to keep the line of the middle of the river. To show compliance with the statute, Radcliff swore that he was, when thus abreast of Market street, not only on the middle of the river, but by way of special merit, that he was nearer the New York shore than the middle of the river, (*fol.* 11), and, by still added grace, that he hove his wheel more aport, and hauled steadily more and more to the New York shore, from the moment he blew his whistle, (*fol.* 13).

He swore that he blew that whistle when he was a boat's length, or a length and a half, below Market street (*fol.* 22); that the *America* was then on his port side and bow, and that he thus blew his whistle to the *America* across five intervening ferries, (*fol.* 22,) and when she was half a mile off, (*fol.* 11).

1st. Thus, according to his statement, he made a signal to the *America*, to go to the left of him.

2d. He did so when she had already gone to the left of him—(he saw her over his port bow).

3d. He did so when she was about half a mile distant from him, (*fol.* 11) (though at *fol.* 12, he changed the distance to 300 yards.)

4th. He did so when the *Fairfield* was heading toward the New York shore, and the *America* heading toward Brooklyn; and the *Fairfield* continued thenceforth to haul, more and more, toward the New York shore, down to the time of the collision.

Now, it is to be noted, that when the *Fairfield* was abreast of Market street, he first saw the *America*, as she came out of the Fulton ferry slip in New York; that when the *Fairfield* (which was 155 feet long (*fol.* 34), had passed only her length, or length and a half, below Market street), he blew his whistle to the *America*. The latter must have been then moving on a line at right angles with the course of the *Fairfield*, and in the opposite direction from that of the *Fairfield*. It could not have been otherwise. The strong ebb tide across which the *America*, was moving, on her trip to Brooklyn, was on her broadside, tending to sweep her laterally down the river, and she could not overcome it and turn, and head up against that tide, until she had crossed two-thirds of the width of the river. From that point her course is straight up the river until opposite her slip, and thence east into her slip. This is shown by Luther Smith, the superintendent of the ferry pilots (*fols*, 113, 114), and by Baulser, the pilot of the *America*, (*fols.* 71, 72, 75), and their testimony on this

point is neither contradicted, nor gainsaid by any other witness.

The annexed DIAGRAM, marked A, shows

1. *Market Street*, abreast of which *Radcliff* says the *Fairfield* was, when he saw the *America* leaving her slip.
2. The position of the *Fairfield*, a length and a half below Market street, when he blew his whistle to the *America*, which was, as he says, then on his port side (*fol.* 12). He says he was heading toward the New York shore at the time he thus blew his whistle, and that he thereupon hove his wheel stil more a-port, (*fol.* 13).
3. The track which the *America*, necessarily took in crossing on the ebb tide, and before she could head up against it, on her way to her slip, on the Brooklyn side of the river.
4. The position which the *America* must, (according to Radcliff's statement), have reached on coming out of her slip, to be seen over the port bow of the *Fairfield*, while the latter was moving a length, or a length and a half, below Market street, *i.e.* between the time she saw the *America* and the time of her whistle.

As to the *Fairfield's* heading before she blew her whistle, and the point at which she blew it, and from which she sheered more and more toward New York Radcliff says:

To libellant's counsel;

Q. *At the time of the blowing of that whistle, state how your boat was heading?*
A. *We were heading a little towards New York*
Q. *A little inclined towards the New York shore?*

A. *Yes, sir; a little that way when we blowed the whistle* (*fol.* 12).

* * * * *

Q. *At the time you blew the whistle, how was your wheel?*

A. *A little a-port; we were going towards New York all the time.*

Q. *And you were heading more towards the New York shore?*

A. *Yes, sir.*

Q. *When you blew your whistle, did you do anything then with your wheel?*

A. *I hove the wheel a little more to port* (*fol.*13).

Q. How long after you passed Market street was it that you gave your signal to the *America*?

A. I had not gone more than a length or a length and a half from Market street; I had plenty of steam and you could hear a whistle blow a mile—half a mile anyhow.

Q. You had just cleared the pier of Market street when you gave the signal?

A. Yes, sir; the length of the steamboat may be a little more for all I know. (Fol. 22).

* * * * * *

Q. When did you begin to edge in towards the New York shore?

A. As soon as I blew the whistle I headed in gradually; I didn't go in all at once, at least so that she would bear that way a little bit.

Q. *How much were you heading towards the New York shore before you blew your whistle?*

A. *We were coming straiyht down.*

Q. Repeated.

A. *We were right in the middle of the river, coming straight down, and when I blew the whistle I put the wheel a-port, so as to sheer the boat gradually towards New York;* I didn't sheer all at once, but so that she kept angling slowly towards New York.

Q. (By Mr. Beebe).—You kept that port on all the time?

A. Yes, sir. (Fol. 23).

He gives the distance between the vessels when

he blew his whistle at 300 yards. (Fol. 12). (But, at *fol.* 11, he made the distance "half a mile or better.")

The statements of this witness as to the course of the *America* are so vague, and so inconsistent that it is plain he had no definite recollection, or idea, on the subject. When questioned by counsel for libellant as to her bearing from the *Fairfield* at the time he blew his whistle, he said:

Q. How did she bear from you at that time?
A. She was heading a little on our port side.
Q. How did you look to see her?
A. I looked on my port bow to see her. * * *
Q. At that time how was she heading with reference to the Brooklyn shore?
A. *She was not heading towards Brooklyn at all then.*
Q. Had she got nearly up?
A. No, sir; *not exactly up, but she was hauling up all all the time.*
Q. Was she still *angling towards the Brooklyn shore when you blew your whistle?*
A. Yes, sir; all the time she was *heading up towards New York;* if anything, *coming right straight out.*
Q. When you blew your whistle was she still swinging?
A. Yes, sir.
Q. She was still *angling towards the Brooklyn shore?*
A. Yes, sir.
Q. She was still *angling towards the Brooklyn shore?*
A. *Yes, sir.*
Q. It was the *America?*
A. Yes, sir. (Fol. 12).

* * * * * Again he is asked by libellant's counsel, and replies as follows:

Q. You say you saw her her (the *America*) as soon as she left her slip?

A. I saw her just as soon as she came out of the slip, *because I knew one left each slip at the same time.*

Q. One left the Brooklyn side, and one left New York?

A. Yes, sir.

Q. The *America* left which side?

A. She came out of the New York slip to go to Brooklyn (fol. 2).

* * * * * To claimant's counsel.

Q. When you first saw this boat coming out of the slip, you say you were abreast of Market street, New York?

A. Yes, sir; *I seen her come from Brooklyn first and I knowed when one left Brooklyn, one left New York at the same time.*

Thus he in effect, avers with equal explicitness the opposite propositions that, at the time when the *Fairfield* blew her whistle, she was heading more and more towards New York; that she was not heading towards New York, but was "in the middle of the river, coming straight down;" that when the *Fairfield* blew her whistle she was half a mile, and, at the same instant, only 300 ~~feet,~~ yds distant from the *America;* that the *America* was, and was not, heading toward New York; that she was, and was not heading toward Brooklyn; that she had not "got nearly up;" that she was hauling up all the time; that she was "heading up towards New York;" and was at the same time "angling towards the Brooklyn shore;" and "if anything, coming right straight out," (of her slip); that he saw her so come out of her New York slip "because he knew one left each slip at the same time," and because he "seen her come from Brooklyn first, and knowed when one left Brooklyn; one left New York at the same time."

These are the confused, incoherent, and inconsistent statements of the only person with whom the deck, and the navigation, of the *Fairfield* were left prior to, and down to, a few seconds before the collision.

It is obvious that had the *Fairfield* been navigated as stated by libellants' witness, (constantly sheering from a point off Market street, more and more towards New York, and the *America* going two-thirds of the width of the river, before she could even head up for her slip in Brooklyn), the vessels could not possibly have come together, unless the *America*, after heading up had then abandoned her trip to Brooklyn, and headed back toward New York, across the tide, to a point where she could intercept the *Fairfield*. It will presently be shown by claimant's witnesses that no such course was pursued by the *America*, nor, indeed, would it have been practicable.

2d.

The attention of the Court is particularly asked to the testimony of *Radcliff* as to *the place at which the collision occurred.*

Attention to this is asked, not because of any mere technical variation between pleadings and proofs, but it is material in this case in determining whether the statements of the witness are intelligent, or can possibly be true, as to his navigation of the *Fairfield*; or as to the distances, positions and bearings of the two vessels.

He states that the place of collision was one hundred yards above the Fulton Ferry, on the New York side, and one-third nearer the New York shore than the middle of the river (*fol.* 21).

The point at which he thus locates it would be about where the letter A is marked on the DIAGRAM B.

Now, his statement that it was thus nearer the New York shore than the middle of the river would necessarily be true, if his other statement were true, viz., that before he blew his whistle, a length of his boat below Market street (*fols.* 13, 22), and still more after he blew it (*fols.* 13, 14), and constantly afterward down to the collision (*fol.* 14), his helm was a-port, and his boat all the while heading more and more toward New York. Had this been true, the *Fairfield* could not have been elsewhere than close to the New York shore, or upon it.

It requires no argument, but simply reference to this testimony, and to the case made by the libel, to show that neither can be true. Had *Radcliff* so steered his boat, and had the collision been at the point he states it, the *America*, to have reached that point, must have abandoned her trip to Brooklyn, and have been whisked off laterally from her course to the point of collision by some power hitherto unknown either to steam, tides, or navigation.

As has been shown, in crossing the ebb tide, she could not head up against it until (about opposite *De Forest's* dock), she had crossed two-thirds the width of the river.

To reach the point of collision stated by *Radcliff*, she would, therefore, have been obliged to move broadside across to the point A on the DIAGRAM B, or, which would have been hardly less practicable, to have turned and gone off at right angles from her course, and to have steered across to New York, with the ebb tide on her starboard side, and thus reached the *Fairfield* by a wholly incredible manœuvre.

3d.

Again this sole navigator of the *Fairfield* says, that, at the time of the collision, her head pointed toward the New York shore.

To questions of libellant's counsel, he replied as follows:

Q. How was the *Fairfield* heading at the time the boats came together?

A. Headed right towards New York.

Q. Had she got right square on the shore, or angling towards it?

A. She was angling towards the shore; she was not right square across the river (*fol.* 16).

* * * * * To claimant's counsel:

Q. When you went over to Brooklyn, after the collision, how did you lie when you were backing—which way did your stern point?

A. We backed right square across.

Q. Square across the river?

A. As near straight as we could back.

Q. Was it actually nearly straight across, or did your bow or stern change either way?

A. Our bow might have swung down a bit—not much—enough to back her square into the slip.

Q. So straight across that you went square into the slip?

A. Yes, sir. (*Fol.* 29.)

The witnesses on both sides say that the vessels came together end on (or slightly on the port bow of the *Fairfield*). Libellants witneses state that the *Fairfield* was on a line at an angle of 45° with the New York shore at the time of the collision. It follows that if the collision was in the part of the river where *Radcliff* places it, the *America* must either have pursued and overtaken her in the impracticable manner above suggested, or by another feat equally unprecedented, have again turned short around and brought her own stern to the New York shore, so as to present her bow to that of the *Fairfield*—*e. g.*, on the lines marked on DIAGRAM *C*.

4th.

Still further, *Radcliff* states that the *Fairfield*, rapidly filling with water, backed across the river from the alleged place of collision to *De Forest's dock*, in Brooklyn, where she instantly sank. It is shown by the testimony of *Baulser* (*fol.* 76) and *Smith* (*fol.* 112), claimant's witnesses, that in backing across, in such condition, from the place named, the *Fairfield* would have been swept by the strong ebb tide, laterally, down the river to a point as far as, or below, the Wall street Ferry on the Brooklyn side. 61

She could not have reached the *De Forrest dock*.

This again disproves Radcliff's statement as to the place of collision.

5th. 62

Again, *Radcliff* swears that when he blew his whistle, the *America*, then distant from him either 300 yards or half a mile (for he makes both statements as to the distance), (*fols.* 11 and 12), was on his port bow; that his helm was then a-port; and that he continued it so. When he thus blew his whistle, the *America's* wheel was at once put hard a-port (*Baulsir*, *fol.* 72). With the two vessels in the position stated by *Radcliff*, and each then and thence *steering away from each other*, the *Fairfield* to the west, and the *America* to the east, collision would have been impossible. 63

It is respectfully submitted, that on the testimony of this, the libellant's chief, and only material, witness, the case made by the libel is not proved, but is disproved.

The testimony of the other witnesses for the libellants does not better their case. It will be hereinafter more particularly referred to. It relates mainly to the condition of things when they came out of the cabin after all the alarm bells had been rung, and when the two vessels had collided, or were on the point of colliding. They, of course, knew
64 nothing of the course and movements of the two vessels during the time (*Radcliff, fol.* 27), that they were at supper.

## POINT III.

*The evidence for the claimants, and the whole evidence, sustain the answer.*

The claimants' case, as stated in their answer, is, in substance, that when the *America* was on her regular course from her slip in New York to that
65 in Brooklyn, and when about 200 yards off the Brooklyn shore, and 250 or 300 yards below the latter slip, heading up the river, against a strong ebb-tide, the *Fairfield*, under full way, was heading down the river, but obliquely, toward the Brooklyn shore, on a course which would have carried her in front of the *America*, into the slip below the Fulton Ferry, the same being the slip at which the *Fairfield* was accustomed to leave, and to which she was accustomed to go for coal barges (see DIAGRAM D); that the *America* held her course steadily; that the *Fairfield*, when within a short distance of the *America*, and when under
66 full headway, and when a change of courses of the two vessels, each to the right, would inevitably result in their colliding, blew one whistle, and put her helm hard a-port, and in that way sheered her directly toward the *America;* that when the *Fairfield* so sheered and blew her whistle, it was obvious, that (with the headway she then had, and the added strength of the ebb-tide),

she would strike the *America's* starboard side, unless the latter could so sheer to the right as to receive the blow of the *Fairfield* on the bow, (the strongest part), of the *America*, or, possibly to admit of her passing on the port side of the *America*, or of striking a quartering, instead of a full, blow on the side of the latter; that the only course left to the pilot of the *America* to 67
avert the imminent peril to the lives of his passengers by avoiding the blow of the *Fairfield* on the side (the weakest part) of his vessel, was to respond to the whistle of the *Fairfield*, so that she might put her helm as hard a-port as possible, and, at the same time, to put his own helm, as he did, hard a-port; that all this was immediately done on the part of the *America;* that she was, moreover, immediately stopped, and her engines backed, and that she had stopped her headway by the land, when the *Fairfield* continued her course, coming directly toward the *America*, with which 68
she collided, head and head.

**POINT IV.**

*The America was on the starboard side of the Fairfield.*

All the witnesses testify that the *America* was heading up the stream, and the claimants' witnesses testify that the *Fairfield* was moving across the river on a line which, drawn from Market street, in New York, would about clear the lower pier of the Fulton Ferry in Brooklyn. 69

If this be true, then the *Fairfield*, from the time she first saw the *America*, had the latter *on her*, (*the Fairfield's*), *starboard side.*

That she was moving on such line, and on her way to the slip next below the ferry in Brooklyn, to see if there was any barge there to be towed thence, is probable, independently of the direct

testimony of the witnesses, in that respect named, from the facts stated in the libel that she was

* * * * * "engaged in the business of towing, distributing around the harbor of New York, canal boats, who were engaged in the business of carrying coal to and from New York and New Brunswick." * * * * * (*Fol.* 2.)

70 These boats "pick up" barges *en route*, just as omnibuses pick up passengers from the wayside.

The witness *Radcliff*, as a reason why he could not state how long it would take the *Fairfield* to go from the Navy Yard to Christopher street (on the North river), said * * * * * "I don't know; I couldn't swear to that, for we might have to stop a good many times, for all I know, which would bother us." (*fol.* 22).

It was also shown that the *Fairfield* was in the habit of stopping at the slip in question to leave barges, and also to "pick up empty ones" (*Baulsir*,
71 *fol.* 68).

It is probable, therefore, to say nothing of the express testimony, that *Radcliff*, according to the custom of the boat, headed the *Fairfield* across the river for that slip, and that, when near enough to see across the piers, that there was no barge in the slip witing to be towed, he put his wheel a port, and sheered off toward the middle of the river, and caused the collision.

But the testimony of claimants' witnesses is explicit, that the *Fairfield* was thus heading on a line across from Market street, New York, to the lower ferry pier in Brooklyn. If this is true, then
72 she had the *America* (which was heading up the river) on her own starboard side, and was bound, seasonably, to get out of the way, and not call on the *America* to change her course.

The pilot of the *Fairfield* shows that he blew one blast, and put his helm a-port. The pilot of the

*America* shows that he at once (and of necessity), complied, and threw his own helm hard a-port.

This conjoint movement only sufficed to bring the vessels together end on. Is not this a demonstration that, if each had held her course, they would have passed clear of each other?

Is it not also a demonstration *that the Fairfield had America on her (the Fairfield's) starboard side?* If so, the statute determines as to her fault. 73

*Rev. Stats. p.* 823, *Rule* 19.

The enforcement of this rule has been so uniform by the Courts, that any citation of authorities would be superfluous. As remarked by the late Mr. Justice Nelson, in *The Chesapeake*, 5 *Blatch. R.* 411,

* * * * * * "The clear weight of the proofs is, that if the propeller had kept her course down the river, no collision would have happened. I prefer, however, to place the decision upon her departure from the safe and fixed rule established by law, that, in the position the propeller held in relation 74 to the other vessel, it was the duty of the latter to hold her course, and of the former to keep out of the way. It should be made known, that this rule will, on all proper occasions, be steadily enforced, and that, in case of a departure from it, followed by a collision, the *onus* will be on the offending vessel to show a clear and undoubted special case of excuse. No such excuse has been shown in the present instance, and, for this reason, the decree of the Court below is affirmed."

**POINT V.** 75

*The conduct of the America:*

The pilot of the *America* (*John Baulser*), a pilot of fifteen years' experience on the ferry, testified that he first saw the *Fairfield* off Market street

(*fol.* 70), and that when it first became necessary for him to have reference to her, he was between Fulton Ferry pier, and the *De Forest dock*, and about one hundred and fifty yards from the Brooklyn shore, and the *Fairfield* was above him some three hundred and fifty yards, as he should suppose (*fol.* 68), and about one-third of the width of the river from, and heading towards, the Brooklyn shore (*fol.* 70); that she was on a line, which, drawn over her bow and stern, would about touch Market street in New York, and the lower dock of the Fulton ferry in Brooklyn (*fol.* 68); that had both vessels continued their courses, they would have passed each other, at a distance of at least twenty or thirty yards (*fols.* 69–73); that there was no apparent reason for any change of course (*fol.* 69); the *America* would have passed outside and astern of the *Fairfield*, (*fols.* 71–72).

76

The positions marked on the DIAGRAM D, hereto annexed, are intended to represent the position of the vessels as thus far described by this witness.

77

He then states, that when the two vessels had proceeded, so that they were about, as he supposed, within two hundred and fifty yards of each other, and after the *Fairfield* had proceeded so far as to be on the *America's* starboard bow (*fol.* 69), the *Fairfield*, blew one whistle, sheering towards the New York shore, whereupon he blew one whistle in reply, and the *America's* wheel was hove hard a-port and the witness rang to shut off, to stop, and two bells to back, in quick succession (fols. 72, 73); that it was impossible to turn more to the right than he did, and that had he not so ported his helm, the *Fairfield* would have struck the *America* on her starboard side (fol. 73); that the *Fairfield's* bow would have gone under the guards of the *America*, and, at the rate she was coming, would have crushed in the hull (fol. 89); that after the *Fairfield* sheered and blew her whistle, no other

78

course could be taken by the *America* that would have cleared her (fol. 74); that the *America's* wheels had three or four turns back at the time of the collision (fol. 74); that not a soul was visible on the deck of the *Fairfield* until after the collision (fol. 74); that the collision took place about one hundred and fifty yards from, and a very little below, the ferry lower dock (fol. 74); that the *America* 79
was going about five miles an hour before he slowed and stopped, and that her way was more quickly stopped in consequence of the depression of her bow, by a large portion of her thousand passengers being on the forward part of the vessel (fol. 75). She was stopped by the land at the time of the collision (*fol.* 75).

The witness states, that had the *Fairfield* been off Market street, in the centre of the river, and heading straight down the centre, when the *America* came out of Fulton Ferry, the *Fairfield* would have pass- 80
ed her in the centre of the river, and the *America* would have been on the Brooklyn shore (fol. 76); he estimates the time between the whistle of the *Fairfield* and the collision at "not over forty seconds" (fol. 76).

There was some sparring between libellant's counsel and this witness on cross-examination, as to his skill, or lack of it, in "boxing the compass," and his accuracy of estimates as to feet and inches, not material to be considered here, as the witness stated that he never was at sea, and used the compass only in fogs (when its aid in enabling the 81
pilot to judge as to the bearing of the ferry slips, is the only use in crossing the ferries) (fol. 78); and his testimony as to the relative positions and movements of the two vessels, was not disturbed or affected, by conjectures as to the number of feet that they were apart.

The material testimony of the pilot *Baulser* was confirmed by that of *Mr. White*, an expert, familiar with the management of, and owning, and running steamboats, from his early youth; he was a passenger on the *America*, and was on the forward part of the boat at the time (*fol.* 82); he says, "*my judgment was that the Fairfield was in the wrong*" (*fol.*
82 85). He thinks the collision was about two or three lengths of the *America* from the end of the lower dock of the ferry slip (*fol.* 85).

(*Length of America*, 164 *feet*, *Smith*, *fol.* 112); *width of river*, from ferry to ferry, 760 yards (*Smith*, *fol.* 111).

*Mr. White* states, that the *Fairfield* was heading from the New York side towards the Brooklyn shore, on a line which would have about cleared the Brooklyn ferry dock (fol. 83); he thinks, that had the *Fairfield* continued her course without slowing,
83 the *America* would have had to slow a little to avoid collision (*fol.* 84); that the collision "was a pretty even strike; there was not much port about it, or starboard; they came together, very near end and end, in a straight line" (*fol.* 86); that it was not yet dark, and that he could see all the way across and up the river (*fol.* 87).

WOOLSEY, the engineer of the *America*, confirms the pilot, *Baulser*, as to the rapidity with which the signals to slow, stop and back, were given; states that he had between three and four turns
84 back before the vessels struck (*folio* 90); and says that in going against that ebb tide, four turns back would stop the *America* by the land (*folio* 93).

*Edward Mount*, a hand of the *America*, on the look-out, was on the bow of the boat, outside of

the forward chain, when she was off *De Forest's dock*, or a little below it (*fol.* 99), and when he saw the *Fairfield*, some three hundred and fifty yards ahead (*fol.* 99), off Marston & Powers dock (*fol.* 100); she was heading to the lower side of Fulton ferry dock from about Market street New York.

He shews that the *America*, when off *De Forest's* dock, was heading on a line straight up the river (*fol.* 99); that the *Fairfield* was then about 350 yards farther up, and about 250 yards off *Marston & Power's* dock; that the collision took place about 150 yards from the Brooklyn shore (*fol.* 100); and that, had the *Fairfield* held her course, she would have cleared the *America* by twenty yards (*fol.* 96.) 85

Without reciting his testimony further in detail, it suffices to say that he confirms that of the pilot *Baulser*.

*Hanson*, a hand of the *America*, of eighteen years' experience, was also on the bow, acting as a look-out from the time the boat left the slip. He, too, confirms material testimony of the pilot *Baulser* (*fol.* 101, *et seq.*) 86

*Stephen Crowell* (president of an insurance company), a passenger on the *America*, substantially corroborates the other witnesses of claimant as to the relative positions of the two vessels, though, as he is not an expert, his ideas as to their movements are somewhat confused, and are, perhaps, not material (*fols.* 106 *to* 110).

87

*Luther Smith*, superintending pilot of claimants for many years, was their remaining witness (*fols.* 110 *to* 145).

The material parts of his testimony have been above referred to.

stopping and backing, did everything possible to comply with the new requirement of the *Fairfield*. (It does not lie with the *Fairfield* to complain of the action of the *America*, which was in full compliance with the requirement of the *Fairfield*.)

(6.) If it was right for the *Fairfield* to
94 blow her whistle and go to the right (and to require the *America* to do the like), it was right for the *America* to do the same thing as she did.

(7.) If the pilot of the FAIRFIELD deemed it his duty to blow one whistle for the reason he assigns, *then it was for the same reason imperatively his duty to have put his helm* HARD *a-port, instead of slightly.* His statement is that he only put it "*a little more to port*" (*fol.* 13), "gradually," * * * * "a little bit," * * * * * "so
95 as to sheer the boat gradually toward New York." "I did not sheer her all at once, "but so that she kept angling slowly to-"ward New York" (*fol.* 23).

(8.) The proofs show that the collision occurred about 150 yards off, or a little below, the ferry pier.

2d.

If this is the true statement of the case, (as we claim it to be), there was no fault in the *Amer-*
96 *ica.*

*What did she do that she ought not to have done; what did she omit to do that she ought to have done?*

Does not the evidence both justify and require the conclusion reached by the District Court and

concisely stated by his Honor, Judge Blatchford, in the last paragraph of his opinion, in the course of which he says: * * * *

"On the testimony of the pilot of the *Fairfield*, the collision could never have happened as it did. The *Fairfield* could not have been as far over towards the New York shore as is claimed for her by him. For if she had been, inasmuch as the tide was 97
ebb, and the *America* had rounded up the river, and could not have done so on an ebb tide until she was well over towards the Brooklyn shore, the vessels could not have come together bow on as they did after the *Fairfield* had ported. On the whole evidence the collision took place through fault of the *Fairfield* in porting, and attempting to cross the bows of the *America* when she had no right to do so. I see no fault in the navigation of the *America*. Her pilot heard the signal whistle of the *Fairfield* when it was blown, and noticed her porting as soon as it took place, and he immediately stopped and reversed his engine and ported his helm, to change the direction of the coming blow."

98

**POINT VI.**

*Libellant's other witnesses:*

The case has thus far been considered on the testimony of all of claimants' witnesses, and on that of *Radcliffe*, libellant's only witness, who saw, or could state, anything that occurred prior to the collision, or the moment preceding it, when the others left their supper, and emerged from the cabin. 99

When they rushed on deck, the vessels were in *articulo collisionis*. The signals had all been given. All the navigation was over. They saw no part of it.

These persons were *J. Quick*, the captain; *A. Quick*, deck hand; *Van Keuren*, the engineer, and

*Fitzsimons*, deck hand. The other witness, *Ferguson*, the fireman, who was acting as engineer, was in the engine room until after the collision.

*J. Quick* states that before he left the cabin the *Fairfield* was backing, and that he reached the forward deck before the collision (*fol.* 32), and that
100 the *America* was then about her length (164 feet, *fol.* 112) off (*fol.* 38). (But *Van Keuren*, the engineer, says that he left the cabin simultaneously with Quick (fol. 53), and that when he got halfway to the engine room (15 feet, fol. 53), "the "boats came together, and partly knocked me off "my feet, as I was not aware of its coming.") *Quick* conjectures, although he took no notice of it, that the *America* was coming at the rate of "about 9 or 10 or 11 knots an hour" (*fol.* 34).

* * * * *

"Q. Did you see any variation in the course she
101 was running upon up to the time she came into you?

"A. No, sir; I had not time for that.

Q. Did you observe, or did you not observe, whether she changed her course or not?

A. No, sir; I did not take notice (*fol.* 35) of that, you know."

Her actual speed is shown by *Baulsir* to have been about five miles (*fol.* 75).

*J. Quick* further says that, after he came on the deck, the *America* blew two whistles, and his son, the other *Quick*, says the same thing but it is con-
102 tradicted expressly by *Baulsir* and the other witnesses on the *America*, and Ferguson, Van Keuren and Fitzsimons, witnesses of libellants, swear that they heard no such signal from the *America*. Such signal would be wholly inconsistent with anything that Baulsir did—and *Quick*, at the same time, says that there was no change in the course of the

*America.* It is immaterial, therefore, whether two whistles were blown by the *America*, though the evidence seems conclusive that no such signal was given.

It is hardly necessary to notice the statements of the witness that five turns of her wheel would give the *Fairfield* stern way in slack water—and that coming down the stream, with a four mile tide, *five or six* turns would give her stern way by the land against that tide (fols. 39, 40), and that she had stern way when he came on deck (fol. 34.) 103

He further states that when he came on deck the *Fairfield* was in the middle of the river, or between that and the New York shore, *heading at an angle of about* 45° *on the New York shore* (*fol.* 38), and off *Dover Street* (*fol.* 36), which he states was the point of collision (*fol.* 39):

Now if these statements were true, that the *Fairfield* was thus at the place stated, and on an angle of 45° with the New York shore, with her helm a-port, and the *America* sheering off in the same direction, with her helm a-starboard, it would have been impossible that they should come together (as there can be no question that they did), *bows on.* Such navigation would have sent both of them toward New York at an angle, of which their bows would have been the apex, or approximating to such position. (See DIAGRAM E.) 104

This witness says that when he went in to his supper the *Fairfield* was in the middle of the river, heading down, on a course "*about east by north*" (*fol.* 31). 105

*Ferguson*, the fireman of the *Fairfield*, (who had taken the place of the engineer while the latter was at his supper), states the signals by bell which

he received to slow—stop—back—and back strong. He did not see the *America* until after the collision (*fols.* 41 *to* 48). Heard no whistle from the *America* (fol. 46).

106 *Van Keuren* (the Fairfield's engineer) did not see the *America* until after the collision, which occurred when he had only got half way (15 ft.) from the cabin to the engine room (fols. 50–53). Heard no whistle from the *America* (*fol.* 51). The *Fairfield* was going 8 or 9 knots when he went to supper (*fol.* 52). She had 20 revolutions, which would propel her at the rate of 9 or 10 knots in dead, slack water (*fol.* 54).

107 *Fitzsimons*, a deck hand, thinks that when he left his supper, the *America*, at full speed, was 100 yards ahead, "but I would not be positive" (*fol.* 56), and when he reached the forward deck she was "about ten yards," distant and moving at not more than 4 or 5 knots.

*Abraham Quick* says that when he left the cabin and reached the forward deck the *America* was a length off. At the collision the *Fairfield* was heading toward the New York shore and a third nearer the New York shore than the middle of the river (*fol.* 64).

108 The above are all of libellant's witnesses.

None of them, except *Radcliff*, profess to testify, or can testify, respecting the navigation of the two vessels prior to the collision, all of which was at an end before they left the cabin.

They can say little more, or else, than that, while

there, they heard the various signals to slow, stop and back (and which having been according to the invariable routine of signaling by pilots, engineers, and of managing engines in such cases, could have been stated just as well by any one not on board the *Fairfield*, but on shore), and one or two of them say that she had stern way at the collision; that when they came on deck the collision 109
was all but simultaneous; that it did occur before the engineer *Van Keuren* (who rushed from the cabin at the same moment with the Captain, Quick) could reach the engine room, some thirty feet distant.

They place the vessels at different distances apart, when they came out the cabin, varying from ten to a hundred yards.

*J. Quick* places the *Fairfield*, at the time of the collision, in the middle of the river, off Dover street, New York. *A. Quick* places her a third 110
nearer the New York shore than that.

The *Quick* witnesses also (with *Radcliff*) impute to the *America* a signal of two blasts of the whistle when the vessels were close together, followed, however, by no corresponding change in her movement; but nobody else on the Fairfield heard it.

*Baulser*, the pilot of the *America*, denies it, and he is sustained by the claimant's other witnesses. It seems certain that no such signal was made by the *America*. If any sound of the kind was heard 111
it was possibly from a propeller, of which libellant's witnesses speak as having, at the time, been a short distance below the *Fairfield*.

Nothing is less reliable than the conjectures of

these witnesses that the *Fairfield* had sternway, or as to the number of feet, or yards, between the vessels, when they came on deck, or the bearing or distance of the *Fairfield* from the New York shore. Nothing is farther from the thoughts of witnesses at such times of sudden peril and excitement than estimates of feet and yards, of the bearings of points
112 on the shores—of the minutes or half minutes involved in their movements—of the numbers of turns of steamboat wheels, either backward or forward—or as to the actual fact of headway or sternway, through the water or by the land. All such conjectures are pure afterthoughts, and "necessarily inconclusive." *The Favorita*, 18 *Wall.* 602.

## POINT VII.

113 On the trials below, libellants were zealous in charging want of proper "*lookout*," on the *America* (a somewhat delicate point, since their own vessel had none whatever).

A supposed deficiency was claimed in the fact that *Mount*, one of the two lookouts, was not at his post at the very outset of the trip from New York to Brooklyn. It is enough that he was there in due season for all that was involved in this case. He was there before there was any occasion to take notice of, or have reference to, to the *Fairfield*. He was there in abundant season to see her when so
114 far off that there was no occasion or motive for changing the *America's* course, with reference to her. He was there in season to see and know that, if neither vessel changed her course, they would pass broad clear of each other. He was there before the *Fairfield's* fault of changing her course and blowing her whistle.

Under such circumstances, the fact that *Mount* was not at the bow of the vessel at the moment of her leaving the slip in New York, is just as immaterial as would be the fact that, on the previous day, he was "off duty," on shore, and not at his post at all.

There was no occasion for, nor would there have been any propriety (but only danger) in *Mount's* calling off the attention of the pilot of the *America* by any words about the *Fairfield*, for that vessel was, at that time, the object of the pilot's attention, and his immediate response of signal to that of the *Fairfield*, and simultaneous porting his wheel, showed that he was giving his entire vigilance, skill and caution to the case. 115

But the Court has, in *Mount's* testimony, an intelligent statement of everything material to the case by an expert witness, who was present as a lookout, at his proper post, before and from the beginning to the end of the whole affair. The Court has no parallel statement from the libellants. 116

It was claimed also that *Hanson* was in fault in having his hands on the chain, while he stood at the bow of the boat acting as a lookout.

When the boat should thereafter reach the float or bridge in the slip, at the end of her trip, it would then be his duty to prevent passengers from unhooking the chain until she should be securely fastened to the bridge. Such unhooking does not occur, and is not guarded against, on the passage across the river, and if, from force of habit, his hands rested on the chain where he stood, he was none the less capable, or observant, as a lookout. He saw all that occurred and states clearly what he saw. 117

It was shown, too, with great emphasis of interro-

may discern a vessel an instant sooner than the pilot may do. The other case is that of intense darkness when he possibly may (though if possibly, very rarely), from his position on deck, below the pilot, discern a sailing vessel sooner than the pilot may do; but, as a general rule, in darkness such vessels more quickly, clearly and safely disclose
124 their presence to the pilot by screening off, by their sails as they pass, the stationary lights of the streets and wharfs and houses. But when it is light enough, as is in this case, to see plainly all over the river, it would be unjustifiable for the lookouts to interrupt the pilot by calling to him in reference to what was directly before his eyes, and on his path,

* * * * * *

"no lookout, could have been of any possible advantage. No lookout would have ventured, or presumed, to interfere with the captain who had the helm at the time.

It would probably have been rather an interference, and a hindrance to the safe management of the boat,
125 for any third person in such an exigency to have diverted his attention. The obstacle was there in plain sight. Its position was better known to the captain than to any other person. No look out could have aided him in the emergency." * * *

*The Farragut*, 10 *Wallace*, 334.

In the present case we are not called on to excuse any remissness, or insufficiency, of the lookouts of the *America*. They appear not to have been deficient either in capacity or vigilance; but the casualty was, in any view, independent of them.

126

Their office was to observe and be able to state all the facts relating to it. The *Fairfield* should have had the like watchmen at her bow.

## POINT VIII.

Libellant's witnesses claim that the *Fairfield*, at the time of the collision, headed across the river to the New York shore; or at an angle of 45° therewith; and it is not disputed that the vessels struck each other end on. These facts establish the answer. The vessels could not have come together on these lines, *both porting their helms*, unless prior to such moments the *Fairfield* had been on the Brooklyn side of the *America*, and on a line which, if continued, would have carried her clear of the latter. It required the simultaneous *porting*, by both vessels, to bring them thus in contact. 127

The collision being *end on*, and the *America's* wheel hard aport, the *Fairfield* at the same time sheering toward New York, the vessels could not before shifting their helms, have been in other relative positions than those stated by claimants.

128

## POINT IX.

*The Fairfield was running at too high speed in such a place.*

*Van Keuren*, her engineer, says (at fol. 53) her speed was, he "should think," 8 or 9 knots by the land, but immediately afterward says, she was making 20 revolutions; that 20 revolutions would propel her *in dead slack water*, as he should think, "9 knots, may be 10." This, with three and a half to four knots of ebb tide added, would give her a velocity quite unsuited to such a place, especially when her navigation was abandoned by master and mariners, and left in sole charge of *Radcliff*. 129

The random guesses of Quick and others, that, as they emerged from the cabin, the *Fairfield* had stern way by the land, seem hardly worthy consideration.

The *America*, on the other hand, with a speed of

only five miles, her bow depressed in the water by the weight of the dense mass of her thousand passengers, most of whom were forward, would lose her headway almost instantly on stopping with the strong ebb tide against her.

130

## POINT X.

OPINION OF THE CIRCUIT COURT

*Reversing the decree of the District Court.*

(1.) After holding that the absence of lookouts, and of all the other people of the *Fairfield*, from her deck was extraordinary and inexcusable, but did not contribute to the accident—the opinion proceeds with the proposition that it was necessary for the *America*, after "heading up the river against "the tide, to go *above her slip*, and then port her
131 "helm, and swing into her slip."

This is a misapprehension. There is nothing in the evidence indicating that the *America* did, or should, go "above her slip."

(2.) Equally a misapprehension is the next proposition, that her course is "well described by the letter S."

It would be difficult, if not impracticable, to reach her Brooklyn slip by navigation on any such counter curves. On leaving the New York slip (as has
132 been seen), with the tide on her port side, tending to sweep her laterally down stream, she could not so far counteract it as to head up against it, until after crossing two-thirds the width of the river, from the New York shore. Having done that, her course was thereafter, not back again toward New

York (*the upward curve of the* S), but straight up against the tide and parallel to the Brooklyn shore, until opposite her Brooklyn slip, into which she then turns. (*Smith, fol.* 114; *Baulser, fols.* 71, 75, 79.)

Having been pressed on her port side by the ebb tide two-thirds of the way across towards Brooklyn, the last thing she would do would be to turn back 133
toward New York and encounter the same adverse tide against her star-board side, to a point on the New York shore higher up than her Brooklyn landing place, and then shoot across, on the arched top of the S into the Brooklyn slip.

Had the movement been on the supposed curves, the course of the *America* would have been on the lines in that respect indicated on the DIAGRAM F.

These misapprehensions led to the conclusion at which the Circuit Court arrived. They doubtless resulted from the remark by one or two of the wit- 134
nesses that when the *America* had proceeded across the stream so far as to be able to head up the river, she pointed, more (than before), toward the New York shore. But this did not mean that she was heading back again across the river towards New York, but only that when, in crossing, she reached the point whence she was able to turn her bow up the river—and while running thence parallel to the Brooklyn shore—her bow, *owing to the bend of the river above the ferry slip*—pointed more towards New York, *i. e.*, to that part of it above Market street, which, by reason of the bend, was in front of the line (parallel to the Brooklyn shore), on which 135
she was moving.

(3.) In the opinion of the Circuit Court consequence is attached to the statement of the cabined witnesses of the *Fairfield*, intended to corroborate

*Radcliff*, her pilot, as to her position in the middle of the river, and her course, both when they went to and when they returned from their supper. They are relied on as disproving the testimony of claimant's witnesses that the *Fairfield* was crossing the river obliquely from Market street to the Brooklyn lower ferry pier.

136 The witnesses of the *America* were all on her bow closely watching the movements of the *Fairfield*, while the witnesses of the latter were in their cabin. Yet the Court say * * "the witnesses on the "*Fairfield* know better than the other could know "her destination and her course."

She may, at the outset, and before they went into the cabin, have been, and her then destination may have been, where they state; but surely their testimony as to her course afterwards is not of the slightest weight. They do not pretend to have been eye-witnesses of it.

137 Nor are their conjectures as to her bearing or distance from the middle of the river, or from the shores, at the time of the collision (points which it is impossible they should have considered, or even thought of, at that moment of alarm and peril), entitled to consideration.

(4.) The opinion (relying on the testimony of *Radcliff*, and construing and regarding as above, that of the *Fairfield's* cabin witnesses, and treating them as paramount to all the actual witnesses of the *America*), assumes that the latter may all have

138 been mistaken because of a possible illusion as to the movement of the *Fairfield*, which illusion, it is suggested, might result from the movements of the boats on different courses. But why all the witnesses of the *America* should be, and the sole witness (*Radcliff*) of the *Fairfield* should not be subject to such illusion, is not obvious.

(5.) Subject to like remark is the further suggestion of the Court that the vision of the *America's* witnesses was impaired "by the obscurity of the evening twilight"—"by the imperfect light."

It may be added that there was no dimness of light.

This is shown by claimant's witness, *Mr. White*, and also by *Radcliff* (Libellant's pilot), who had no difficulty in seeing the *America* "half a mile off," as she emerged from her slip. 139

(6.) The opinion states the further proposition that "when the two vessels gained such a position, "that precautions to pass each other in safety were "proper, they were approaching each other so "nearly end on that the rule that each should keep "to the right of the other, applied to them."

We think we have shown that such was not the relation of the vessels. *But if it were, what was the fault of the* AMERICA? *She put her helm* HARD *a-port. The* FAIRFIELD *put hers but very* SLIGHTLY *a-port. The fault then, in this supposed case, was that of the* FAIRFIELD—*not that of the* AMERICA. 140

But, is it not certain that they were not coming thus end on, when the *America's* helm *hard* a-port, and the *Fairfield's* somewhat a-port, served only to bring the two boats together?

(7.) The Court hold it also to have been incumbent on the *America* to have had a vigilant lookout, and that the actual lookouts were useless, because they "made no report" to the pilot. We suppose this objection to be fully answered by our 7th Point. 141

(8.) The opinion of the Circuit Court also assumes

that the pilot of the *America* did not seasonably discover the *Fairfield*.

This is a mistake, as he saw her when she was off Market street, and when he first had occasion thereafter to navigate with reference to her, she was off Marston & Powers' dock, at such distance that the
142 pilot of neither vessel saw any reason for changing their courses, but both proceeded some distance before the error of the *Fairfield* occurred, resulting in the collision. They were so far apart as not to suggest any idea of danger, or even of difficulty, for they not only moved some distance after being thus each observed by the other, but (as before mentioned), *Radcliff* (the *Fairfield's* pilot), "did not think there would be a collision until after he was backing some time." (*Fol.* 14.)

(9.) The opinion of the Circuit Court results from
143 the misapprehension of the testimony to which we have referred, and from a rejection of the testimony of the five witnesses on the part of the claimants, who were on deck, and saw the whole transaction, and the adoption, instead thereof, of that of *Radcliff*, the only witness of libellants who saw it, and of the four other witnesses of libellants who were in the cabin and did not see it.

## POINT XI.

144 This case illustrates the rule that the District Court, that tries the case in the first instance, can best judge as to the credibility and intelligence of the witnesses, and of the weight to be given to their testimony.

The utter confusion and inconsistency of state-

ment by *Radcliff* (libellant's only material witness), and his lack of intelligence, are shown under our second point. The District Judge saw and heard the man, which the Circuit Judge did not. He also saw and heard the claimant's pilot (*Baulser*), and the other witnesses who were on the deck of the *America*, as well as the libellant's below-deck witnesses. He could best judge—he could alone 145
judge—as to the manner, the intelligence, the candor, or the lack of them, of all these witnesses, and of the relative weight to which, from these considerations, their testimony was entitled.

He could, *e. g.*, best judge whether *Radcliff's* statements (of which a summary is given on 17th page, *ante*), to say nothing of his manner, did, or not, entitle him to equal weight with claimant's *pilot*, *Baulser*—whether the statement of *Quick* was true, that he reached the forward deck and the upper deck, while the *America* was yet her length off —when in fact the collision occurred before *Van* 146
*Keuren*, who left the cabin at the same time with him, reached half way to the engine room, which was some thirty feet from the cabin—whether it could be true that when *Quick* went into the cabin, the *Fairfield* was in the middle of the river, and heading down the centre thereof, and at the same time heading *E. by N.* (fol. 30)—whether he was reliable in stating the angle on which the *Fairfield* at the collision, was heading towards New York, and that she was on the *medium filum aquæ*, while at the same time, his eye being on the *America*, he was so much flurried that, in reply to a question whether he saw any variation in her 147
course, he said,

A. *No, sir; I had not time for that.*

Q. Did you observe, or did you not observe whether she changed her course or not?

A. *No, sir; I did not take notice of that, you know.*

The District Judge, with the witness before him, could best determine whether it was probable that while looking at the *America*, which, according to his statement, was rushing upon him, he had not time to notice her course and movement, but had time to, and did make trigonometrical calculations as to the bearing and distance of the *Fairfield*,
148 with respect to the New York shore, and her position respecting the middle of the river.

And so, also, as to the other witnesses.

It is with great respect submitted, that the decree of the District Judge should stand, especially in a case depending on testimony as to facts, and that his decision should not be disturbed, unless it appears that it resulted from palpable mistake, and that it was not reconcilable with the testimony.

* * * * * The District Courts have better opportunities for examining such cases, and forming
149 a correct conclusion than any other. They may examine witnesses *ore tenus*, and, although they may not have not Trinity masters to assist them, yet, in difficult cases depending on nautical experience, the judge may call to his aid experienced masters of vessels (as is done in one district at least), whose report will greatly assist the Court in coming to a correct conclusion. * * * (The *Hypodame*, 6 *Wall. on p.* 224.)

* * * * The Court that can see the witnesses, hear their statements, observe their demeanor, and compare their degree of intelligence, is better able than an appellate tribunal to reconcile differences in testimony, or, if that be not possible, to ascertain the real nature of the transaction. The Dis-
150 trict Court that tries the case in the first instance enjoys this advantage. * * * * (The *Quickstep*, 9 *Wall. on p.* 669.)

So verdicts will be sustained when the Court, on perusal (not on hearing) the testimony, would reach a different conclusion; and the reports

of referees will not be disturbed, unless the preponderance of testimony is so great as to warrant the presumption of partiality or unfairness, or mistake in the application of some rule of law. * * *

"The referee, having the witnesses before him, in "person, has a better opportunity than the Court to "determine the degree of credit, to which their "testimony is entitled." (*Hoogland vs. Wight*, 7 151
*Bosw.* 394, *and cases cited. Mazzetti vs. N. Y. & N. R. R. Co.* 3 *E. D. Smith*, 98.)

**POINT XII.**

The decree of the Circuit Court should be reversed, and the libel dismissed, with costs.

152

BENJ. D. SILLIMAN,
*Adv. for Claimants, Appellants.*

# United States Supreme Court.

---

THE AMERICA,
*Claimant and Appellant,*

*ads.*

THE CAMDEN AND AMBOY RAIL ROAD &c. CO.
*Libellants and Respondents.*

*Brief of Claimant on Exceptions to Report of Commissioner.*

The *Fairfield* sank at De Forest's dock, near Fulton Ferry in Brooklyn, in consequence of the collision with the *America*.—(*Stevens, fol.* 146.

She was thirty-three years old (*Stevens, fol.* 151) and her hull was not good. (*ib.* 146—155) The Libellants raised, and removed, her at great expense, to Hoboken, in New Jersey, and were engaged more, or less, during four months in raising her and placing her in dry-dock, which was done in April, 1867. (*Stevens, fol.* 147.)

A variety of experiments was tried in taking her in pieces, and removing her boiler and machinery—and her guards were blown off by torpedoes.

The Libellants knew before placing her on the Dry-Dock that "it would not pay" to repair her,—her hull being poor and broken, as were her machinery and boiler (*fol.* 146 *to* 149).

Libellants were at work on her while lying at Brooklyn for two, or three months before taking her to Hoboken (*fol.* 156). "The hull was not worth enough to pay for breaking it," (*Brown, fol.* 140,) and "it would cost more to repair her than a new hull would cost," (*fol.* 149.)

It does not appear that the Libellants called on Claimants to raise the *Fairfield*, or to do any thing whatever as to the removal, repair, or sale, although the Claimant's place of business was within a few yards of where she sank.

It does not appear that Libellants were called on by any person, or authority, to remove the *Fairfield*, or do anything respecting her, but that all that they did was a voluntary enterprize, and most expensive experiment of their own.

The result was that they expended, (according to the Commissioner's report,) in removing the *Fairfield*, and placing her on the Dry-Dock.....$5.000
and that the value of what they saved, by so doing was but..... 1.500

making of loss by what they did,.....$3.500

The Commissioner reported the value of the *Fairfield*, (before the collision) at $9.000, and that there was due to the Libellants for such value—and for such expense of raising, and for interest, the sum of $17.723.75 on the 4th Jan. 1873. (fol. 159, 160.)

The claimants excepted to the Commissioner's Report.

1st. That he had allowed *interest* on the value of the vessel.

2d. That he had allowed *interest* on the expense of raising her.

3d. That he had allowed the expense of such *raising* of the vessel, and *interest* on such expenses. (*fol.* 161, 162.)

These exceptions were overruled by the Circuit Judge. (*fol.* 167.)

## I.

1. The *Commissioner* should not have allowed the expenses incurred by Libellant ($5,000 less $1,500 salvage), in removing the wreck of the "Fairfield," (from the place where she was sunk in the East River), to Hoboken in New Jersey.

The Libellants should not recover for total loss of the *Fairfield*—and, also, in addition the large amount of their voluntary expenses incurred in removing her some five miles to Hoboken and their added expenses of putting her on the Dry-Dock there, when they knew that the vessel was not worth raising.

*The Columbus* 3 *Rob.* 158.

While the owner of a vessel injured by a collision may abandon her, and claim a total loss, *where it is plain that by reasonable exertion she may be saved*—yet, on the other hand, where, as in this case, the vessel was more than thirty years old—and so injured that a horse and cart could have been driven into the hole made by the collision [*fol.* 20];—where the

claimants were immediately at hand—very much nearer than Libellants—the latter should not have gone to the great expense they did without notice to claimants; and continued their operations during four months—(*December to April—Steven's test* 7,)—without one word of consultation with, notice to, or consent from, the claimants.

Having omitted to give such notice what they did was properly at their own risk and cost.

Under such circumstances the removal was a speculation by Libellants, neither authorized, nor concurred in by claimants, and resulted in nothing.

It was done at a cost of $5,000—while the only amount saved from the wreck was $1,500.

The claimants are charged, in the first place, with the *whole value* of the vessel as a total loss.

They ought not to be charged with the added expense of Libellants unauthorized adventure subsequent to her total loss, and voluntarily incurred by them.

*The Columbus*, 3 *W. Robinson*, 158.

This proposition is implied in the opinion of the Court in *The Baltimore*, 8 *Wallace* 377, in which the Court recognize the rule that the owner of the injured vessel is not bound, even as between him and the claimant, to raise the wreck, *unless where it may be done without undue expense.*

The Court say (in *the* "*Baltimore*") that "decided cases may be found where it is held that the owner of the injured vessel is not bound to raise the vessel in a case where she was sunk by a collision."

The decision was to the effect that where *it is plain that the vessel can be saved* AT A REASONABLE EXPENSE the owner should not abandon her.

S. P. implied in The *Columbus*, 3 *Wm. Rob.*

"*The Nebraska*," 3 *Benedict* 261 (cited by Libellants) is not inconsistent with the position we claim.

In that case there was no reason to suppose the sunken vessel past repair. She was raised by contract at the small expense of $500. The Court say "It was manifestly possible to raise her."

In the present case, on the contrary, the vessel was an old worn out boat, and Libellants knew before incurring the great expense of putting her on the dry-dock "that it would not pay to repair her" * * * * * "that it would cost more to repair her than a new hull would cost" * * * * * and that "the hull was not worth enough to pay for breaking it up."

It cost but $1000 to take her to Hoboken—all the rest of the expense resulted from the useless experiments afterwards.

The costly voyage of the wreck from Brooklyn to Hoboken was not necessary for her mere removal as an OBSTRUCTION, from the point where she was sunk, even had any requirement been made that she should be removed. There was no occasion for her being carried all the way to New Jersey and being placed on a dry dock.

There is no pretence that libellants were REQUIRED to remove her.

NO NOTICE was given by them to defendants to remove her. Had it been done, she could have been raised and taken to pieces within a hundred feet from where she sunk, at small expense.

In any view claimants should not be required to pay this item, in absence of proof of notice to, and refusal by, them to raise the vessel

## II.

If the $5.000 claimed as cost of the removal of the *Fairfield* could be recovered, such claim would be severe enough on claimants. It would be unreasonable to allow INTEREST, ($1,406.75,) in addition, on an expenditure so speculative and profitless.

It could not be allowed on that item as a *tort* of claimants, the whole expenditure being on an independent enterprise of libellants after the vessel had been destroyed.

*Lincoln v. Claflin*, 7th *Wallace*, 132.

Libellants, demand in this case is in fact in the nature of a claim on an *account* in which claimants are debited with the value of the vessel, and also with the expenses of libellants' experiment, and are credited with the value of the material saved.

This account was unliquidated, and until liquidated (by the Decree) neither party could know the amount due (if anything) to libellants.

Claimants could not tender, or pay, the amount, nor could libellants state the amount due them.

The evidence shows that it was impossible to know (until a decree) what was the amount to which the Libellants were in any view entitled.

That interest does not run on unliquidated accounts.

*See Rensselaer Glass Factory vs. Reid*, 5 *Cow.* 587.

*Robinson vs. Stewart*, 10 *N. Y.* (6 *Seld.*) 189.

Until liquidated it is a running account. Thus under a policy of Insurance, where there is no doubt as to the amount of the loss, interest is allowed, *but when the preliminary proofs are indefinite* in this particular, interest is not allowed.

*MacLoughlan vs. Wash. Co. Ins. Co.* 23 *Wend.* 525.

The present case illustrates the reasonableness of the rule we claim, that the amount due (if any) could not be stated, or paid, before a decree. The libel claimed the loss to be $20,000. The Commissioner's report fixes it at $9,000 for the vessel, and $3,500 for expenses, and finds $1,500 as saved.

It has not been in the power, therefore, of claimants, until this finding, to know what amount they should tender, nor of the Libellants what amount they should exact. Why then should claimants be required to pay interest on that amount?

Such damages bear no interest.

*Gilpins vs. Consequa Pet. C. Ct.* 85, *S. C.* 3 *Wash. C. Ct.* 184.

*Willings vs. Consequa Pet. C. Ct.* 172.

In some cases of *tort* the allowance of interest is discretionary. But it is only in cases of tort proper. In cases of merely *quasi* tort, interest should not be allowed.

In a case of collision, where there was gross and wilful misconduct, the principle might apply, but where, as in this case, the very utmost that could be claimed would be that the collision arose from an error in judgment, it cannot be treated as a tort, in the sense of the term allowing interest.

Even in cases of absolute tort the allowance of interest is discretionary. The cases indicate that it is only awarded in nature of punitive damages where the trespass has been wilful or gross.

Thus interest on the profits of an infringement of a patent cannot be allowed.

*Silsby vs. Foot*, 20 *How.* 378.
*Seymour vs. MacCormick*, 16 *Howard*, 480.

The wilful violation of a Patent was certainly a graver tort than the unintended miscalculation, (to use the strongest term), of claimants which resulted in the collision.

III.

The decree overruling claimants' exceptions should be reversed.

BENJ. D. SILLIMAN.
Adv. for Claimants.

# U. S. Supreme Court,

The Camden and Amboy Railroad and Transportation Company,
*Lebellants and Appellees,*

*ads.*

The Steam Ferryboat America, her tackle. The Union Ferry Company.
*Claimant and Appellant.*

## BRIEF AND ARGUMENT FOR LIBELLANT AND APPELLEE.

### Statement of Facts as Claimed by the Appellee.

The steamboat Fairfield, belonging to the appellee, was engaged in the business of towing boats barges and otheer vessels between New Brunswick, the terminus of the Delaware and Raritan Canal, and the port of New York. The ferryboat America, belonging to the claimant, was engaged in running upon a ferry in the East River, in the port of New York, commencing at Fulton ferry upon the New York side, and terminating at Fulton ferry on the Brooklyn side. The slips being diagonally from one another, the slip on the Brooklyn side being the farthest to the east, and

the distance between the two ferries being 760 yards (*vid.* Test. of Luther Smith, folio 111); but the width of river at and along the place of collision, in a direct line, being about 1560 feet, as appears by the map. The length of the Fairfield was 155 feet while that of the ferryboat was 164 feet.

The Fairfield had brought a tow of boats from New Brunswick, and had been engaged in distributing them, and had left the last at Wallabout or Navy Yard, and having set her regulation lights at about five o'clock on the 13th day of December, 1866, left the Navy Yard bound to the foot of Christopher street, on the North River side, and the regular course to reach which would be down the East river and between Governor's Island and the Battery. That after coming out into the East river her course was straightened down the river, and just about the center of it, and on the direct and shortest route for her objective point, to wit: Christopher street. Her pilot, Radcliff, took the wheel; the assistant engineer was placed in charge of the engine, and it being supper time the rest of the crew went to their supper in a room which was on deck, but were all on deck before the collision, and all saw it with one exception.

When the Fairfield had reached a point in the East river about abreast or a little below Market street, the pilot of the Fairfield saw the America emerging from her slip, on the New York side, and knew that her destination was on the Brooklyn side. The tide at the time was about one half ebb, and was running at the rate of three to four knots an hour. The speed of the Fairfield was at the time about eight and a half to nine miles an hour, and that of the America from nine to twelve through the water. The America came out on a hard-a-starboard wheel, and gradually headed up the East river, and kept that swing until the collision, as the libellant's witnesses testify, and which we say the facts establish. The pilot seeing the course of the ferry-boat, and that they would be coming nearly or

quite head and head, blew a single whistle, indicating her intention of keeping to the right as required by law and the rule of the road and sea, and slowed her engine; this was done at a long and safe distance if it had been regarded by the America, and the wheel of the Fairfield was put slightly to port, and she was sheered slightly towards the New York shore—when within about one hundred yards of one another, the pilot of the Fairfield finding that no attention had been paid to his signal, and that the America was still swinging into his course, ported his wheel still more, throwing the head more into the New York shore, and promptly rang her bells to slow, stop and back, and with a jingle bell to back strong, and the Fairfield actually had sternway on by the land at the time of the collision. At no time was the wheel of the Fairfield put to starboard after she had straightened down the East river. The America continued her course until she was within about fifty yards of the Fairfield, when she, for the first time, blew two whistles and at too late a period to have her signal result in anything, and continuing her headway with slightly diminished speed struck the Fairfield a heavy blow with her stem upon the port bow of the Fairfield, knocking the stem and bow of the Fairfield off to starboard, and making a whole in her port large enough for "a horse and cart" to drive in, or for "a team of horses," and so large that the passengers in the ferry-boat could see the furnace fires of the Fairfield. The Fairfield continued backing under her jingle bell to back strong, except when she slowed for an instant for a propeller to pass under her stern, and backed into a slip, two slips below the ferry being so full of water when she reached that point that her decks were under water, and she sank almost immediately, the crew barely and with difficulty escaping with their lives. The danger signals were blown by the Fairfield, and the crew hailed the ferry-boat asking for assistance, but the ferry-boat, without rendering or attempting to ren-

der any assistance, except that they were told "to "go to hell," "before their time."

The Fairfield was subsequently raised and towed to Hoboken, and was there put on the ways, and was subsequently broken up as not worth repairing.

There was no lookout stationed on the Fairfield, and it would be difficult to see of what value he could have been had he been there, as the America was seen as soon as she emerged from her slip, and kept in sight up to the time of the collission by the pilot.

There is a feeble attempt to make lookouts of the two deck hands of the ferry-boat who never saw the Fairfield until she was off Marston & Powers' coal yard, the first dock above the ferry-slip, and who were not charged with the business of reporting what they did see and did not report, so that their eyes were of little value either to themselves or to the ferry-boat.

The Fairfield was first seen by Balsir, the pilot of the America, when she was off Marston & Powers' coal yard and only 300 to 350 yards distant from him, and his boat at that time within one hundred and fifty yards of the Brooklyn docks, as he says, abreast of De Forests' stores.

We think that the testimony and surrounding circumstances fairly establish these facts, and we confidently look for an affirmance of the decree of the Circuit Court, and we beg leave to call the attention of the Court to a brief analysis of the testimony which we think necessarily produces these conclusions.

*First.*—The position and course of the Fairfield in the river when the America was seen emerging from her slip was straight down the river, a little, if anything on the New York side.

"I saw her just as soon as she came out of her slip; we were on the New York side, a little bit. (Testimony of Radcliff, fol. 11.)

Q. Where was the Fairfield at the time you went below to get your supper?

A. In the middle of the river about off Jackson street. (Test. of John Quick, fol. 31.)

Q. At that time did you observe how the Fairfield was heading, in reference to the New York shore?

A. Yes, sir.

Q. How was she heading?

A. About an angle of 45 degrees.

Q. Towards the New York shore?

A. Yes; nearly that. (Test. of John Quick, fol. 33.)

"Before I went in I noticed Captain Quick round her to straight down the middle of the river. (Test. of Ferguson, fol. 43.)

Q. When you started to get something to eat, whereabouts was the Fairfield in reference to the two shores?

A. I think she was in the middle of the river, a little over a quarter of a mile from the ferry slip. (Test. of Fitzsimmons, fol. 55.)

After the collision same witness fol. 58. "I think we "were about half way to the New York shore.

"She was right in the middle of the river, heading right down the river." (Test of Quick, folio 61.)

Thus four witnesses who came on board the Fairfield fix her position and course after she straightened down the East river.

They were on board the Fairfield and could determine with more accuracy what position she held.

*Second.*—She went no nearer to the Brooklyn shore.

"Q. When you blew your whistle did you do "anything with your wheel?"

"A. I hove the wheel a little to port."

Test of Radcliff, fol. 13.

"Q. After you put your wheel to port did you at "any time starboard your wheel up to the time of "the collision?"

"A. No, sir; I did not starboard at all."

"Q. Still kept it a-port?

"A. Yes, sir.

Test of Radcliff, fol. 11.

This positive testimony of the only witness who could know how the fact was negatives of the idea that she could have been heading on the Brooklyn shore, and fixes the fact that the only changes she made were towards the New York shore.

That she was substantially in the middle of the river when first seen by the pilot of the America and the man claimed to be the lookout, making only a slight allowance for prejudice, partiality and the natural desire of those on the America to shield themselves from censure and the consequences of their own carelessness, is confirmed by the testimony of these witnesses themselves.

"A. She was about one-third of the width of the "river from the Brooklyn shore off Marston & "Powers' coal yard. (Folio 70, Test of Baulsir.) I do not know what distance she was on the river, she might have been one-third of the way across. (Same witness, fol. 80.)

It will be borne in mind that the river at this point is only feet wide, and even with an honest witness in the dusk of the evening, a mistake of a hundred or two hundred feet could easily have been made, and it is especially weak in view of the positvie testimony of the witnesses on the Fairfield.

"A. When I first noticed her she was from 200 to 250 yards off Brooklyn shore.

Test. of Mount, folio 96.

"Q. How many lengths of your boat should "you judge the Fairfield was off from Marston & "Power's dock when you first saw her?

A. She was about 300 yards or 350.

Q. From Marston & Powers' dock?

A. Yes, sir. (Test. of Hanson, fol. 105.)

A. I should think she was about 200 yards; she was out considerable ways, more or less.

The combined force of all the positive and inferential testimony certainly seems to establish that the Fairfield was about the center of the river.

*Third.*—Her course was down the center of the river, inclining towards the New York shore, on the port wheel, because,

*First.*—This is shown by the testimony of all the witnesses on the part of the libellants.

*Second.*—It is not shaken by the testimony of the witnesses on the part of the ferryboat.

It is shown that by the testimony of the pilot of the America that he came out of his slip on a hard a-starboard helm, and when he got straightened up the river he was only 150 yards from the Brooklyn shore, and within 300 to 380 yards of the Fairfield.

This movement would give to the witnesses on the part of the America that the Fairfield was approaching the course of the America when exactly the opposite was true, that the America was swinging upon the course of the Fairfield.

She did swing and the necessary effects of that swinging was to throw her upon the course of the Fairfield.

*Fourth.*—The character and place of the wound shows it. Where was the wound?

"A. She struck us on our port-bow. Q. What part of her hit you? A. Her bow. Q. What effect did it have upon your bow and stem? A. It stove her bow all in. Q. Did it break the stem or knock the stem one side? A. It knocked the stem right around on the starboard side. Test. of Radcliff, fol. 17.

"A. You could drive a cart and horse right into her I should think." fol. 20.

Q. Coming up on your port bow?

"A. Yes, sir. Quick, fol. 33.

"A. It appeared to be on her port bow." Test. Ferguson, fol. 45.

"Q. Where was the hole? A. In the port bow, the worst of it. Q. How large a hole was it? A. Very large; the bow was all knocked out, bursted right open." Van Kuren, fol. 53.

Q. Where did she strike you? A. on the port bow. Fitzsimmons, fol. 57.

Q. At the time the America actually struck you, where did she strike? A. On the port bow. Q. What effect did it have on your stern? A. It knocked right over towards the starboard." Quick, fol. 42.

This testimony is nowhere contradicted. Had the Fairfield been heading on to the Brooklyn shore and whether the America had ported or not it would have been impossible for the two vessels to have come together in that way, especially the pilot of the America swears that the Fairfield only commenced to shear when but 200 yards away.

*Fifth.*—The blow could only have been given in that way by the Fairfield heading down the river inclining to the New York shore and the America coming up nearly head and head and swinging on to her.

*Sixth.*—The America was heading in fact up the river and inclining on to the New York shore.

The lamentable ignorance, and at the same time, laughable exhibition of the pilot of the America, upon the subject of the points of the compass, by a pilot of seventeen years, experience as a pilot, and who cannot after that time even box the compass or tell, even the cardinal points shows that no reliance can be placed upon anything that he testifies upon the subject of points of the compass the respective vessels were steering upon, see fol. 77 and 78, and read his testimony, and it is exceedingly difficult to determine after such a lesson, what degree of credit can be given to anything he testifies to only where strongly coroborated. But even he strengthens the testimony of the libellant's witnesses when he abandons his compass. It is clear that, like a parrot, he had learned a lesson by note to repeat and it was only when he was lead away from his lesson upon a cross-examination that he shows his profound ignorance.

"Q. When you started from your slip on the "New York side how was your wheel?

"A. My wheel was shoved hard a-starboard."

"Q. How long did you hold your wheel to star- "board until the boat headed up the river?"

Baulsier, fols. 77 and 78.

Q. As she left the slip what was the course of the America? A. She came straight out of the slip.

Q. Did you notice any change in her course?

A. I saw her heading up the river more all the time." (Radcliff, folio 12.)

"Q. After you blew your signal, what was the "course of the ferry-boat; what did she do after you "blew your whistle and put your wheel to port? "She kept on still swinging? A. Yes.

"Q. Did that bring her more toward you, or the "opposite? A. Yes, sir; more toward us all the "time" (folio 13, Radcliff).

"Q. As you were angling? A. Yes, sir; she "was angling the same way we were. Q. Angling "up and a little on to the New York shore? A. Yes. "(Quick, folio 33).

"She was coming slightly at an angle; the "Fairfield was heading toward the New York shore, "and the America was slightly angling." (Fitzsim-"mons, folio 56.)

"Q. Which way was the ferry-boat pointing? "A. She was pointed a little towards New York, "too." (Quick, folio 62.)

"Q. Which of your slips were you heading for "when you got forward? A. I was heading pretty "near up the river. Q. Where would you have "hit if you had kept right on the course you were "on? A. We would have hit somewhere above "the dry docks. Q. On the New York side? "A. Yes, sir. Q. By dry docks you mean Mar-ket street, or somewhere there? A. Yes, sir.

"Testimony of so called lookout Mount, folio 99

"Q. Did you observe what was done by your "boat when she sheared? A. Our boat sheared "also. Q. Which way? A. Up the river. Q. "Did you shear to the right or left? A. Sheared "to the left.

Testimony of witness Crowell for claimant, folio 108. A. She was 50 yards further out by shearing, folio 109.

This testimony would seem to establish the course that the America was on, composed as it is in part by the testimony of the claimants own witnesses as being up the river and upon the course of the Fair-field, or though directly contradicted by other witnesses by the claimant, and which testimony would make the collision, as it occurred, impossibe.

Again, if when the America got straightened upon her courseshe was within 150 yards of the Brooklyn shore, as testified to by Baulsir then, and it took all that space to straighten up the river, then it follows as

a necessary consequence that she must run out into the river again and form a letter S, in order to be able to turn into her slip.

*Seventh.*—The Fairfield was bound to Christopher street and the tide was strong ebb.

"Q. How was the tide? A. Ebb tide. Q. After "leaving the last boat where were you bound to? "A. To Christopher street," folio 10, test of Radcliff.

*Eighth.*—The place to which she was bound and the state of the tide negatives the idea that she would leave a favorable tide, and run out her course to seek the Brooklyn shore without any apparent cause, thus lengthening her trip, and strengthens the positive testimony of the witnesses for the Libellants.

*Ninth.*—The reason given by the pilot of the America that he supposed that the Fairfield was going to the Brooklyn shore for a boat, with a strong ebb tide is simply ridiculous to any one acquainted with navigation, when it is known that she would only land head to the tide, and could not land going with the tide; then he was further educated by the single whistle of the Fairfield, what she intended to do.

*Tenth.*—These various suggestions and extracts from the testimony of the witnesses seem to place this case in the light of two steam-vessels running upon opposite or nearly opposite courses and upon

such lines as would probably result in a collision, if both vessels kept on there respective courses.

*Eleventh.* This invokes the rule that both vessels should, without regard to signals, have kept to the right.

Was this done by the Fairfield? Every witness in the cause testifies to this fact at some point or other before the collision, and it would seem to be unnecessary to make copious extracts upon a point about which there is no dispute.

*Twelfth.* Was it done in time, and did she signal her intention of keeping to the right?

Q. "Did you give any signal? *A.* Yes, sir; one "whistle. Q. What was that signal that you gave? "A. To go to the right. Q. How far should you "think the ferry-boat was from you at that time? "A. All of 300 yards. Testimony of Radcliffe "folio 12.

All the witnesses on the Fairfield testify to the blowing of the single whistle, although they were not on deck to see what distance the America was then off. But all except the engineer was on deck in time to witness the collision, and in time to see the America once her length off, and after bells had been rung to slow, stop and back at intervals between each, and in time to hear the only answering signal made by the America.

The pilot of the America states that when he first saw the Fairfield she was 350 yards away, and the same estimated distances are sworn to by the witnesses, Mount and Hanson; and the pilot says that distance had been diminished but 100 yards, leaving 750 feet, when the Fairfield blew her signal

of a single whistle, and that the Fairfield had commenced to sheer when that whistle was blown. This, certainly, ought to be a sufficient distance, and in ample time, had the America promptly responded.

*Thirteenth.* The Fairfield when she blew her first whistle slowed and ported.

Q. "When you blew your whistle did you do "anything with your wheel? A. I hove my wheel "a little more to port, and slowed her down? Q. "By what signal did you slow her down? A. One "bell. Q. Was that signal obeyed? A. Yes, sir." Radcliff, folio 13.

This testimony is directly corroborated by every witness on the Fairfield, including the engineer in charge of the engine.

*Fourteenth.*—To this signal he received no answer.

"Q. Did you receive any answer to your signal "from the ferry-boat? A. No, sir; I didn't receive "no signal at all."

*Fifteenth.*—Receiving no answer to this signal at finding that the America was still swinging upon his course the Fairfield stopped and backed.

"Q. You say you stopped and backed. How far "were the vessels apart when you stopped and com- "menced backing? A. About 200 yards; and he "headed then right for me."

Test. of Radcliff (folio 14.) This testimony is also corroboratad by the other witnesses in the Fairfield as well as by the pilot of the America.

*Sixteenth.*—The Fairfield had made from 10 to 12 revolutions back before the collision, and had stern way on at the time of the collision.

"Q. How many had your boat made? A. We "had made 10 or 12 turns back, all of ten, and I "think 12.

"We had stern way on us at the time she struck "us, going astern. Q. Were you really going "astern? A. Yes, sir; we were. Q. You had "overcome your headway, and the tide also?

"A. Yes, sir; all stopped and going back."

(Radcliff, folio 17).

"Q. About how many revolutions had your "engine made at the time the vessels came together? "A. I guess 10 turns, and may be more. Q. At "that time in reference to the shore which way was "she going? A. We were going astern. Q. Ac- "tually had stern way on? A. Yes, sir."

(Quick, folio 34).

"Q. How many revolutions were there from the "time the bells came to back until the jingle bell rang "to back strong? A. I should think 6 or 7. Q. Be- "tween the time the jingle bell rang to 'back "strong' and the collision, how many revolutions "was there time to make? A. Probably two or "three."

(Van Kuren, folio 51).

This testimony is sustained by the other witnesses and is no where contradicted and must stand as the truth and establishes the fact that the Fairfield not only stopped in time but actually had stern way at the time of the collision.

*Seventeenth.*—A point was made upon the argu-

ment below that the Fairfield could not have been out in the middle of the river because if she had she would not have reached the Brooklyn side before she had been carried down nearly or quite to Wall street ferry.

There does not seem to be much weight in this suggestion, on the contrary, it would seem to strengthen the proof that she was there and must necessarily have been as far out as she was, in order to enable her to reach the slip she backed into, because

I.—Her stern was up the river only angling towards the Brooklyn shore, and would have performed a circle around before she could reach the shore, and which would carry her far up the river beyond the place of collision.

II.—She could not be controlled by her wheel as she had stern way on.

III.—She continued to back wide open except for an instant when she paused to let a propeller pass.

IV.—She was backing with all power she had, and with as much as she could have gone ahead with, even had she been wide open and the jingle bell rung to go ahead "strong".

V.—Had she been within 150 yards of the Brooklyn side, she would have with the direction she was pointing, gone into a slip above instead of below Fulton Ferry.

*Eighteenth.*—It is not contended that the Fairfield had any lookout other than the pilot, and that it is a fault, but it is earnestly contended that his absence in no way contributed to the collision, because

I.—The America was seen by the pilot the instant she emerged from her slip, no lookout could have seen her sooner.

II.—The navigation of the America from that time was carefully watched by the pilot of the Fairfield, and he alone had the power to control the movements of the Fairfield. The presence of a lookout could in no way save a collision or contribute to it under these circumstances. He could only have been an additional witness to coroborate the movements of the Fairfield by the pilot, and strengthen the case against the America.

*Nineteenth.*—It is not however essential to the proper disposition of this cause where in the river the Fairfield was, whether running along the Brooklyn shore or in the middle of the river or upon the New York. The nearer she was running to the Brooklyn shore, the more important it became that the rule of keeping to the right should prevail and be adhered to, and the more necessary and imperative it became for the America to have seen the Fairfield taking the proper measures in time.

We have thus considered all the testimony as to the position, conduct, and management of the Fairfield, and it is confidently submitted that the Fairfield was without fault, and that she did all that skill and careful navigation could have done to avoid a collision.

If the Fairfield was without fault and the collision not inevitable, then it would follow as a necessary sequence that the America was in fault.

No such defence is set up, and, in view of the fact that these vessels were apparently the only ones in the river at time, that it could not have been the result of inevitable accident.

The only remaining question to be discussed, is in what the faults of the America consisted, and we say :

*First.*—She had no lookout stationed at a proper place and charged only with the duty of looking out and reporting any vessels that they saw.

Two of her deck hands claim to have been lookouts, but in no proper sense did they discharge such duty.

Both were charged with the duty of putting up the chains when the boat left the slip on the New York side, and afterwards to make their way forward through a mass of passengers, horses and vehicles. Mount, one of them, only reached the forward boat, after the ferry-boat had straightened upon her course, and was pointing towards Market street, on the opposite side of the river.

"Q. When the boat left the slip, where were "you? A. We were both on the other end. Q. "Both on the after-end? A. Yes, sir. Q. When "she left, you hooked up the chains? A. Yes, sir. "Q. It was crowded with passengers, was it not? "A. Yes, sir. Q. Did you mention the circum- "stance to any one of the fact that you saw her? "A. No, sir. Q. You had no duty to call any "one's attention to it? A. No, sir. Q. How far "out had you got in the forward part of the boat "—had you got turned? A. Yes, sir; she had got "turned when I got forward. Q. How far was she "off from you when you first saw her? A. I sup- "pose she was 350 yards.

Mount, folio 99.

We have thus the history of one of the so-called lookouts :

"Q. Your business was to keep the passengers "from throwing down that chain? A. Yes, sir; "so that they should not throw it down. Q. How

"far off was she then? A. I should think 300 "yards or 350. Q. You saw the Fairfield you "said? A. Yes, sir. Q. Did you report her to "any one? A. Not particularly I did not.

"Q. Did you report her to any one?

"A. No, sir; I did not.

"Q. You saw her and supposed all the rest saw "her?

"A. Yes, sir.

"Q. But you did not consider that you had any "duty to report her?

"A. I don't know.

"Q. Did you report her?

"A. No, sir.

"Q. Did you neglect any duty in not reporting "her?

"A. I do not know that I did; I reported her to "the passengers.

"And although he states that he reached the for- "ward part of the America just as she was emerg- "ing from the slip (of which there is grave doubt), "he failed to see the Fairfield until within three "hundred yards.

This disposes of the second so called lookout.

Certainly the pilot of the America has no better position; there is no pretence that he was charged with looking, and if professing in any way to keep a lookout, he kept so poor a one that although the Fairfield was in sight when the America left her slip, still he failed to see her until the America had crossed the river and had straightened up the river, and not until the Fairfield was within three hundred yards or opposite Marston and Power's dock.

It certainly is a farce to call such a force look-outs.

*Second.*—It was all important that she should have a good and careful lookout, not only from the character and business in which she was engaged, because

I. It is important where they are laden with such masses of human lives that the most careful and attentive lookout should be stationed and charged with no other duty, and it is poor economy to charge the lookout with the care of the ferry-boat.

II. The ferry-boats are hidden by their slips from vessels passing up and down the river, and the utmost care should be taken to ascertain the position of vessels when she does come in sight that she govern her navigation accordingly.

*Third.*—A good lookout on this occasion was important, and if kept the Fairfield ought to and could have been seen when more than half a mile away.

*Fourth.*—Seen at that distance, any and all necessary measures to avoid a collision could have been taken in an abundant time, and the collision could and would have been avoided.

*Fifth.*—It is evident that owing to the neglect of these navigating the America that the Fairfield was not seen until she was right upon her, and too late to avoid a collision. The pilot's mind and attention was occupied in taking the necessary measure to reach his slip and land his passengers, and gave no attention to surrounding objects until they were forced upon it and then it was too late.

*Sixth.*—The Fairfield was in plain sight from the time the America left her slip, and the pilot should have seen her and as he knew that the course of the America on the then state of the tide would necessarily bring her nearly head and head with the Fairfield, he should have been prepared in time to keep the right and to have done so, as it was clearly his duty to have done.

*Seventh.*—He received a signal of a single whistle

from the Fairfield when she was three hundred yards away and should have responded with a single whistle promptly and immediately ported, and no collision could have taken place.

*Eighth.*—She did not respond in or take the necessary measures in time either to port or prevent a collision by slowing, stopping and backing.

It was a matter of very little importance whether she responded with one whistle or two, as to the result, although if she did blow a single whistle it was inviting the Fairfield to go on (the Fairfield was however at the time of the answering signal actually backing.)

"Q. Did you get any signal from her before she "struck you? A. Yes, sir; two whistles.

"Q. How near was she to you when those two "whistles were blown? A. She was not fifty yards "off; she was close to us. A. We were backing "when she blew two whistles." (Radcliff, folio 15.)

"Q. Where was the America in reference to the "Fairfield? A. She was a little over a length off "and she blew two whistles.

"Q. When you got on the forward deck? A. She "was within about a length of us.

"Q. At that time had she blown any whistles? A. "No, sir; as I got on the forward deck she blew "the whistle, it was then too late."

Quick, folio 33.

"Q. How far off was the America when you reach-"ed the forward deck? A. About one length off.

"Q. Did you hear her whistle? A. I heard "two whistles.

"Q. Where were you when she whistled? A. On "the forward deck.

"How many whistles did she blow? A. Two."

Quick, folio 62.

*Ninth.*—Her speed was kept up until about the time of the collision, and she should have seen the Fairfield, and slowed, stopped and backed sooner.

Q. How fast do you think the America was coming on to you? A. She was coming as fast as she could come. Q. How fast do you think that was? A. I think she was coming about ten knots. Q. How near had she got to you before you saw any diminution of her speed? A. She had got within a length. Radcliff, folio 14.

Q. At the time you went on the forward deck how rapidly was the America coming upon you? A. Coming pretty fast. Q. Can you give us any idea you think she was coming at? A. I think she was running about nine, ten or eleven knots an hour. Q. Before she struck you was her speed diminished? A. I don't know; we were going stern foremost. Q. Was it diminished. A. It must have been diminished some, but not much. Quick, folios 34 and 35.

Q. How far do you think the America was from you when you started from the door? A. I should think one hundred yards, but I won't be positive. Q. How rapidly should you think the America was running when you saw her before she struck you? A. I should think she was at full speed at the time. Q. At the time she struck, how fast? A. I should not think she was going more than four or five knots an hour. Fitzsimmons, folios 55 and 56.

Q. How far off was the America when you reached the forward deck? A. About one length off. Q. How did she seem to be coming? A. Pretty fast. Q. Did you hear her whistles. A. I heard two whistles. Q. Where were you when she whistled? A. On the forward deck. Q. How many whistles did she blow? A. Two. Q. What was the Fairfield doing at the time? A. She was backing.

*Tenth.*—The terrible effects of the blow demonstrates the speed at which she was coming. She struck the Fairfield on her port bow, with her stern nearly head and head but slightly angling. The

blow knocked the bow stem and over to the starboard, bursted her bow all in, drove her bow and stem all back, made a hole in her port side into which you could drive a horse and cart—a team of horses.

How could there be stronger evidence as to her speed even up to the instant of the collision.

*Eleventh.*—If the America did blow a single whistle and port her wheel, the testimony nowhere shows that her head was changed in the slightest degree to starboard; on the contrary, while the testimony of her pilot and the two deck hands show that her course was not changed, the testimony of Crowell and White shows that instead of porting she must have starboarded and fell off rapidly to port.

The navigation of the America is covered with the grossest neglect and want of lookout care or attention, and is so faulty that a conclusion that she is liable to the damages sustained by the Fairfield would seem to be irresistible.

The positive and irreconcilable contradiction between the witnesses on the part of the claimant while it would be uncharitable to charge the crime of perjury upon any of them, certainly shows an absence of that accurate knowledge which furnishes grounds for safe reliance in the disposition of a case so important, and for a proper understanding of the testimony, and that a more intelligent conclusion can be arrived at, it would perhaps be well to call the attention of the Court to some few of the more glaring instances:

*First.*—As to the direction the American was heading.

The pilot says that he straightened her up the river so that she was heading right up the East river—the witness, Mount says she was so headed that if she kept on her course she would leave but the New York side about Market street.

On the other hand the witness, Hanson, says:

Q. Was she heading straight up along the Brooklyn docks, or was she angling a little towards New York, sw nging out? A. She was making her course for the Brooklyn shore, folio 104.

Q. Now your course? A. We were heading right into this dock here, and just as she got her way turned up a little that way and brought the bows right together.

Q. So that you struck right on her port bow? A. It was a pretty even strike—there was not much port or starboard about it, they came together pretty nearly end and end in a straight line. White, folio 86.

Q. How could she hit your side? A. She did not sheer fast enough, the America was heading across the river and as the Fairfield sheered, my impression was that she would strike us right on the side and instead of that she struck us on the bow. Crowell, folio 108.

Thus the several witnesses, divided into two classes, making the heading at right angles, or, at least, one quarter of the circle, different and equally positive.

*Second.*—As to the side the impending blow was to come, and which side she was on.

Q. He would have hit me on the starboard side of my boat. Baulsir, folio 73.

Q. On which side did you see her, on your starboard, or on your port side? A. She was on our port side coming down. White, folio 83.

Q. As you were heading on which of your bows was he? A. On the starboard bow.

(Baulsir, 49, folio 69.)

Q. Which bow did you see her off—which side of

your boat—starboard or port? A. I don't recollect. I think she was off our starboard side. Mount folio 99.

Q. After the Fairfield sheered? A. Yes. When I saw her sheer she would strike us on the side. Q. Struck your wheel where? A. On the left side. Crowell, folio 108.

Thus every witness differs in position and place of anticipated collision.

*Third.*—If the statement of the witnesses is true, that the America was headed towards her slip, then of course it would have been reckless, for the Fairfield to have crossed her bow.

*Fourth.*—The Fairfield as a matter of fact was at all times up to the time of the collision on the port side of the America and never on her starboard.

This is abundantly shown by the relative position as given by the witnesses on the part of the claimant as well as the witnesses on the part of the libellant.

The witnesses place the Fairfield when first seen by the America abreast of Marston & Powers' dock, and from 250 yards to the centre of the river, and while the America was but 150 yards from the docks on the Brooklyn side abreast of D. Forest's stores.

*Fifth.*—This is further proved by the place of the blow on the Fairfield, to wit, on the port bow.

*Sixth.*—If the fact was that the America was

heading towards the Brooklyn shore, then it is perfectly certain that she could not have struck the Fairfield with her stem upon the port bow of the Fairfield.

*Sixth.*—She could not have done it by porting, as the pilot says he did, as they would have thrown her stem still further away.

*Seventh.*—She could only have done it by starboarding, as Crowell and White both say she did, and thus bring them head and head. This would be impossible, if the testimony of the pilot is reliable.

## ADDITIONAL POINTS.

### I.

The theory of the civil law being that the appellate judge is presumed (from superior wisdom) capable of correcting errors of the appealed from tribunal, may obviate any invidiousness in the remark that the Circuit Court has given to the case a much more thorough investigation than that presented by the opinion of the district judge.

### II.

While the subject of Look Out ! is not noticed in the one opinion, although regarded by neither as

contributing to the collision, yet Courts rarely omit rebuking this grave delinquency whenever presented, and the wholesome admonition of the Circuit judge can but have proved beneficial to the safety of life and property, whose interests the opinion had conspicuously in view.

III.

Reading the two opinions, with a diagram of the place and surroundings of the collision, is almost sufficient to dispose of the case adversely to the appellants.

IV.

The District judge avowedly adopts, as the *foundation of his opinion*, the allegation of the answer, corroborated by the pilot of the America (page 3, fol. 6, and pp. 41, 43 and 44, fol. 68½ and 73½), *settling, in his opinion, as facts* that the Fairfield, after leaving the Navy Yard, intended to stop on the Brooklyn side, at the next dock below the ferry slip, into which the America was bound, *there* to take up a "barge" or tow, and that the Fairfield was steered crossing the bow of the America, and was plainly heading for such destination when first seen from the America.

It is obvious that if this statement of the answer and the pilot's evidence be a fabrication or a mistake, the opinion is deprived of its only foundation.

V.

There is no reasonable doubt of these results.

The evidence is positive and uncontradicted, that no such destination or object was in contemplation for the Fairfield.

That her work for the day ended at the Navy Yard, and she was bound without making any intermediate stops around the city to her birth, some two miles up the North river, at the foot of Chrispher street, having before her a distance of some four miles to accomplish.

Inspection shows, that the misnavigation falsely imputed to her (1) would have taken her out of her way, (2) would have crossed dangerously near to the bow of the America, then in full view, (3) would have been faulty navigation, even if not intending to stop, by losing the best tide; (4) unboatmanlike in so stearing as not to take up the barge by "rounding to," from below the barge and heading the tide; (5) the evidence disclosing, [what the Circuit Court rebukes] that she could not possibly have intended taking up a barge or tow, because "*all hands were at supper and the navigation of the boat was alone in charge of the pilot;* nothing can be more absurd than imputing the intention to take up "a tow," and steer out of her way for the Brooklyn shore, *under such circumstances.*

## VI.

The fabrication or mistaken version upon which the District Court rested, being then disposed of, the views of the Circuit Judge may be resorted to, as illustrated by diagram believed to be reliable in all essential features, and supported by the clear preponderating weight of reliable evidence.

## VII.

The happy and apposite simile suggested by the

circuit judge depicting the courses of the vessels (the letter S,) renders quite unimportant the precise place of collision, whether mid-river, or nearer the New York or Brooklyn shore, for the "place where" only modifies the previous course or track of the America.

VIII.

The self deception of the pilot of the America as to the heading of the Fairfield towards the Brooklyn shore, admits of 3 or 4 solutions. 1st.—"The thought was father to the wish." 2d.—The anxiety for a good swing on the ebb, to effect a right angle approach and entrance in her ferry-slip. 3d.—Perhaps an illustration of that "after kind of navigational sagacity and cunning to cover up" nautical *malfeasance.* 4th.—His "eyes were made the fools of the other senses."

IX.

Under the circumstances of approach, even had the Fairfield headed towards, and intended to stop at the Brooklyn dock, and attempted to pass inside of the America, she would have violated the rule of navigation, and in the event of a collision must have come into Court "on a starboard, and disfavored, instead of a "port-helm," and could hardly have escaped, at least, an apportionment.

X.

The mistake so often created of imputing change of movement to an outside vessel when the mere appearance of such is caused by the motion of the vessel on board of which is the witness, commented

upon by Judge Woodruff, is recognized by the court in the case of "The ship Marcellus, 1 Black, 416, 18." 1 Wm. Rob. 156, 2 ed. 339.

XI.

At page 428 3 Benedict D. Reports, the learned district judge remarks "that the theory of the libel is based on the too prevalent notion, &c. &c., in other words, the judge, adopting the allegation or theory of the answer and testimony of the America pilot that the Fairfield was crossing the bow of the America and heading into the next dock below the slip, &c., and was between the America and the Brooklyn shore, whereas *such a state of facts did not exist*, and the one whistle signified in time "keep to the right, danger is apprehended.

The skilful pleader did not except to the libel, *prima facie*, one whistle imports "end on or nearly end on, and risk of colision."

XII.

At page 431 of 3 Benedict Dist. Rep., the incredible idea is reiterated that the Fairfield, while between the America and the Brooklyn shore, heading for the dock next below the America's Brooklyn slip, abandoning a safe course without any cause other than *arbitrary caprice* (or insanity or viciousness of her pilot), attempted deliberately to sink the America with a thousand passengers on board, (known to be on board at that hour by the Fairfield pilot), by running into her starboard side, reaching her hull by passing the bow of the Fairfield *under her guard*.

347-439

XIII.

The reflection is suggested and may be exercised from one among the oldest practitioners in the U. S. Admiralty Courts, (that the present opinion of a judge, whose recent death was materially accellerated by unremitted arduous labor demanded by the diversified subjects presented under common law, commercial, revenue, bankrupt, equity, patent and admiralty law; whose decisions constitute monuments of his integrity, learning and ability) should be committed to the undersigned counsel to be vindicated as worthy of being preserved intact, and so handed down as explained in legal reports, by the most improper tribunal known to judicial history.

Invoking from the Court a careful consideration of this case, we rest with great confidence that the decree of the Circuit Court will be affirmed.

W. R. BEEBE,
*Of Counsel.*